In the Supreme Court

OF THE

United States

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CHARLES ELMORE CRO
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THE ATCHISON, TOPEKA AND SANTA FE RAILWAY COMPANY (a corporation),

Appellant,

vs.

RAILROAD COMMISSION OF THE STATE OF CALIFORNIA, and LEON O. WHITSELL, C. L. SEAVEY, EZRA W. DECOTO, THOMAS S. LOUTTIT and W. J. CARR, as members of and constituting said Railroad Commission,

Appellees.

No. 470

LOS ANGELES & SALT LAKE RAILROAD COMPANY (a corporation),

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Appellees.

No. 472

BRIEF FOR APPELLEES.

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BRIEF FOR APPELLEES.

Appellants will be referred to as the "Railroads" and appellees will be referred to as the "State Commission."

Throughout this brief the various opinions involved in this controversy will be referred to by the short titles adopted by appellants in their brief.[1]

OPINIONS.

The opinion of the Supreme Court of the State of of California is reported in *A. T. & S. F. Ry. Co., et al. v. California Railroad Commission, et al.* (1930), 209 Cal. 460, hereinafter referred to as *Second State Court Case,* and included in the Record at pages 184-199.

The opinion and order of the State Commission, directly involved herein are reported in *Municipal League, et al. v. Southern Pacific Co., et al.* (1927), 30 Opinions of the R. R. Com. of Cal. 151, hereinafter referred to as the *Third State Commission Decision,* and will be found at pages 119-134 of the Record.

Other Opinions Rendered By Commissions and Courts Relating to this Controversy.

The first opinion and order of the State Commission are reported in *Municipal League, et al. v. Southern Pacific Company, et al.* (1921), 19 Opinions of the R. R. Com. of Cal. 740, hereinafter referred to as the *First State Commission Decision.* (R. pp. 24-84.)

The opinion and order of the State Commission on rehearing are reported in *Municipal League, et al. v.*

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1. Unless otherwise indicated all emphasis in quotations from decisions of the Courts is supplied by us.

Southern Pacific Co., et al. (1921), 20 Opinions of the R. R. Com. of Cal. 937, hereinafter referred to as the *Second State Commission Decision.* (R. pp. 84-96.)

The first opinion and order of the Interstate Commerce Commission are reported in *Los Angeles Passenger Terminal Cases* (1925), 100 I. C. C. 421, hereinafter referred to as *First Federal Commission Decision,* and included in the appendix to this brief pp. 29-108; the second opinion and order of the Interstate Commerce Commission are reported in *Los Angeles Passenger Terminal Cases* (1928), 142 I. C. C. 489, hereinafter referred to as the *Second Federal Commission Decision.* (R. pp. 135-156.)

An opinion of the Supreme Court of California is reported in *A. T. & S. F. Ry. Co., et al. v. Railroad Commission* (1922), 190 Cal. 214, hereinafter referred to as the *First State Court Case.* (R. pp. 97-111.)

An opinion of this Court is reported in *Railroad Commission of California v. Southern Pacific Company, et al.* (1924), 264 U. S. 331, hereinafter referred to as the *First Los Angeles Case* and included in the appendix to this brief pp. 16-28; an opinion of this Court is reported in *Interstate Commerce Commission v. United States, ex rel. Los Angeles* (1929), 280 U. S. 52, hereinafter referred to as the *Second Los Angeles Case* and included in the appendix to this brief pp. 109-122.

STATEMENT OF THE CASE.

These appeals are from judgments rendered by the Supreme Court of the State of California in three con-

solidated cases wherein the State Court affirmed an order of the State Commission which requires the Railroads, and each of them, to proceed:

> "to construct and thereafter operate a union passenger station within that portion of the City of Los Angeles bounded by Commercial Street, North Main Street, Redondo Street, Alhambra Avenue and the Los Angeles River, together with such tracks, connections, and all other terminal facilities and additions, extensions, improvements and changes in the existing railroad facilities of said Companies as may be reasonably necessary and incidental to the use of said union passenger station, at a cost of approximately ten million dollars ($10,000,000), in substantial compliance with the plan outlined in Commission's Exhibit 4-b herein.
>
> Work upon the construction of said union passenger station shall commence within ninety (90) days after the effective date of this order, and shall be completed within three (3) years after said date.
>
> Upon and after the construction of said union passenger station the operation by defendant Southern Pacific Company of passenger and freight train service, excepting only industrial freight switching service during hours hereinafter to be described by proper authority, over that portion of its railroad between College Street and East Fifteenth Street, inclusive, in the City of Los Angeles, shall be abandoned and discontinued." (R. pp. 133, 134.)

The order provided that it should

> "become effective from and after the promulgation by the Interstate Commerce Commission of an order issuing and granting proper and sufficient certificates or other appropriate order or orders covering and authorizing the construction, extensions and abandon-

ments herein authorized or directed, it being the intent of this Commission that the issuance of such certificates * * * shall be and constitute a condition precedent to the effectiveness of the said Order of this Commission; * * *" (R. p. 134.)

In the said order the State Commission reserved the right

"to make such further order or orders in these proceedings relating to the construction, operation, modification and abandonment of facilities, to costs and division of costs, and to all other matters relating thereto, as may be determined by the Commission to be just and reasonable and as public safety, convenience and necessity may require." (R. p. 134.)

The Commission order is predicated on numerous findings of fact, among them being findings which in substance and effect declare that existing passenger terminal facilities of the Railroads are inadequate and that the present and future public convenience and necessity require the construction and operation of the said union passenger station as ordered. (R. pp. 131-133.)

The proceedings giving rise to the said Commission order were instituted before the State Commission in 1916 by several civic organizations praying for the elimination of certain grade crossings within the City of Los Angeles by the concentration and the joint use of the tracks of the Railroads, for a rearrangement of the passenger stations and freight stations and the establishment of a union passenger station. (R. pp. 9-12, 19-20.) Following numerous hearings the State Commission rendered its decision and order requiring the Railroads

to eliminate specified grade crossings and to construct a union passenger station within a defined area not far removed from the Railroads' existing stations. (*First State Commission Decision, supra.*) (R. pp. 24-80.)

Upon application of the Railroads a rehearing was granted and a second decision and amended order was made by the State Commission again requiring the Railroads to construct a union station and eliminate specified grade crossings. (*Second State Commission Decision, supra.*) (R. pp. 84-96.)

Petitions for writs of certiorari were filed by the Railroads in the Supreme Court of the State of California and the State Court annulled the Commission's said decisions and orders upon the ground that the State Commission had been divested of its power to order the construction of a union passenger station by the enactment of the Transportation Act of 1920. (*First State Commission Case, supra.*) (R. pp. 97-111.) This Court granted writs of certiorari upon application of the State Commission, and thereafter affirmed the judgment of the State Court. (*First Los Angeles Case, supra.*) This Court did not adopt the reasoning of the State Court, however, and did not hold that the State Commission had been divested of its jurisdiction in the premises. To the contrary, this Court pointed out that the Transportation Act of 1920 gave to the Interstate Commerce Commission the "means of control over installation of such new union stations," and that until the Interstate Commerce Commission had acted under Paragraphs 18 to 21 of Section 1 of the Interstate Commerce Act, the Railroads could not be "required to provide a new interstate union station, and to extend their main tracks thereto as ordered

by the State Railroad Commission." *(First Los Angeles Case, supra.)*

Subsequent to the time the State Commission's first two decisions were rendered, and prior to the time this Court decided the case last cited, the City of Los Angeles instituted proceedings before the Interstate Commerce Commission praying for an order requiring the Railroads to construct and operate a union station, to abandon main line passenger and freight service, except local switching on Alameda Street, eliminate grade crossings, construct and acquire new facilities and join in the operation of their several terminal facilities.

The Interstate Commerce Commission thereafter rendered its decision in the *First Federal Commission Decision, supra,* holding that it was not empowered to require the Railroads to construct a union passenger station, but that under the holding of this Court in the *First Los Angeles Case, supra,* it might properly issue certificates under Paragraphs 18 to 21, Section 1 of the Interstate Commerce Act, authorizing the proposed extensions and abandonments as ordered by the California Commission. The Interstate Commerce Commission made specific findings with reference to the issues presented.[1]

---

1. (1) "That the present and future public convenience and necessity permit the abandonment of operation of all passenger and freight train service, except industrial freight-switching service, on the main line of the Southern Pacific on Alameda Street from College Street to East Fifteenth Street, inclusive, in the City of Los Angeles, Calif.

(2) That neither the present nor future public convenience and necessity require or will require the construction or extension by applicants of new or existing main lines of railroad in the City of Los Angeles, Calif., as described in the application in Finance Docket No. 3569.

(3) That the present and future public convenience and necessity require and will require (a) the extension by defendants

The report was not accompanied by certificates carrying out its findings, and the Commission reserved jurisdiction to alter its findings in the event the plan of the State Commission as finally evolved should be materially

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of their respective main lines of steam railroad in the City of Los Angeles, Calif., so as to reach and properly serve any union passenger station and terminal within that portion of said city bounded by Commercial Street, North Main Street, Redondo Street, Alhambra Avenue, and the Los Angeles River, which they or any of them may construct and establish in accordance with a lawful order of the Railroad Commission of California, and (b) the extension of their respective main lines so as properly to provide for the rearrangement of passenger and freight routes incidental to the convenient and proper operation of such union passenger station and terminal.

(4) That the extensions referred to in the preceding paragraph are reasonably required in the interest of the public convenience and necessity, and that the expense involved therein will not impair the ability of defendants to perform their respective duties to the public.

(5) That, in addition to the abandonment of service on Alameda Street as above authorized, the present and future public convenience and necessity permit the abandonment by defendants of such portions of their respective main lines of steam railroad in the City of Los Angeles, California, or of the operation of all or any portion of the present interstate train service thereon as may be incidental to the rearrangement of passenger and freight routes, of tracks, and of terminal facilities, made necessary or proper in connection with the construction and establishment by defendants, in accordance with a lawful order of the Railroad Commission of California, of a union passenger station and terminal within that portion of said city described in paragraph 3 above.

(6) That the use by any defendant steam carriers of so much of the terminal main-line track or tracks of any of the other defendant steam carriers in the City of Los Angeles, Calif., as may be incidental, and necessary or convenient, to the proper operation of any such union passenger station and terminal as defendants or any of them, in accordance with a lawful order of the Railroad Commission of California, may construct and establish in that portion of said city described in paragraph 3 above, is in the public interest and is practicable, without substantially impairing the ability of the carrier or carriers owning or entitled to the enjoyment of such track or tracks to handle its or their own business." (*First Federal Commission Decision, supra* (pp. 459-461); Appendix to this Brief, pp. 92-94.)

different from that "as here considered to be in the public interest."

In this regard the Commission's report stated:

> "For orderly procedure it appears preferable that appropriate certificates in connection with the proceedings now before us should be issued subsequent, rather than prior to, the making of an order by state authority, but that the securing of favorable action on our part be made a prerequisite to the effectiveness of any state order. Such a procedure would enable us to pass upon a specific proposal and obviate the semblance of consenting in advance to construction, the extent and expense of which could only be surmised. We think the expression of the Supreme Court in *R. R. Comm. v. Southern Pacific Co., supra,* at page 346, to the effect that our certificate is, in the instances therein specified, 'a condition precedent to the validity * * * of any order by the State Commission,' is not inharmonious with these views." (*First Federal Commission Decision, supra,* p. 459.)

Subsequent to the decision of the Federal Commission the proceedings before the State Commission were reopened and after further hearings the State Commission rendered its third decision and order under review herein. (*Third State Commission Decision, supra.*)

Petitions were thereafter filed with the Interstate Commerce Commission by the State Commission praying that the certificates issue in accordance with the findings made by the Interstate Commerce Commission in the *First Federal Commission Decision, supra,* and by the City of Los Angeles also asking for such certificates and in addition that an order be entered requiring the Railroads to

construct and thereafter operate a union passenger station and appurtenances in substantial compliance with the State Commission's Exhibit 4-b. (R. p. 142.)

The Interstate Commerce Commission then made its second decision and order again holding that it was without authority to require the construction and operation of a union passenger station. The Commission, however, pursuant to the prayer of the State Commission and the City of Los Angeles and in accordance with its interpretation of the decision of this Court in *First Los Angeles Case, supra,* issued its certificates under Paragraphs 18 to 21 of Section 1 of the Interstate Commerce Act, authorizing the proposed constructions and abandonments.[1]

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(1) The certificate and order of the Commission were in the following form:

"It is hereby certified, That the present and future public convenience and necessity (1) require the construction by Los Angeles & Salt Lake Railroad Company, the Southern Pacific Company, and the Atchison, Topeka & Santa Fe Railroad Company of extensions of their respective main lines of railroad in the City of Los Angeles, Calif., so as to reach and serve a union passenger station and terminal which they may construct in the Plaza district, pursuant to the order of the Railroad Commission of the State of California to that effect; (2) require the construction of the necessary extensions of their main lines, and permit the abandonment of such other portions of their main lines, as may be necessary to provide for the rearrangement of passenger and freight routes incidental to the convenient and proper operation of such union passenger station and terminal; (3) permit the abandonment of operation of all passenger and freight train service, except industrial freight-switching service, on the main line of the Southern Pacific on Alameda Street from College Street to East Fifteenth Street, inclusive, in the City of Los Angeles, Calif.; and (4) require the use by any defendant steam carriers of so much of the terminal main-line track or tracks of any of the other defendant steam carriers in the City of Los Angeles, Calif., as may be incidental, and necessary or convenient, to the proper operation of such union passenger station and terminal." (*Second Federal Commission Decision, supra* (R. pp. 153-154).)

The City of Los Angeles petitioned the Supreme Court of the District of Columbia for a writ of mandamus to compel the Interstate Commerce Commission to consider the evidence before it in the *Los Angeles Passenger Terminal Cases* to determine whether it should require the Railroads to construct and operate a union passenger station in the City of Los Angeles. This petition was dismissed by the Supreme Court of the District, reversed by the Court of Appeals of the District of Columbia, which Court was in turn reversed by this Court in the *Second Los Angeles Case, supra.*

Thereafter, the State Court, upon the authority of the decisions of this Court in both the *First* and *Second Los Angeles Cases, supra,* held that Congress had not entered the field of regulation respecting the establishment of union passenger stations so as to terminate the State's power to deal with the subject, but that Congress had "merely occupied the field of supervising and ascertaining the jurisdictional facts with relation to the establishment of such stations." (R. p. 193.) The State Commission order was upheld as a reasonable exercise of the police power, it being held that "there is nothing unreasonable or arbitrary in the findings and order made," and that "the findings of the Railroad Commission were made after full consideration and upon ample evidence." (R. pp. 196, 197.)

In brief appellants urge: (1) that the Commission order is in conflict with the Commerce Clause of the Federal Constitution and certain provisions of the Interstate Commerce Act; (2) that the certificates issued by the Interstate Commerce Commission are void and (3) that the Commission order deprives them of constitutional rights

in violation of the Fourteenth Amendment to the Federal Constitution. We shall answer these contentions in the order presented.

CORRECTIONS IN APPELLANTS' STATEMENT OF THE CASE.

Appellants in their statement of the case (Brief of Appellants, pp. 4-15) have made certain erroneous statements of fact which call for correction or other comment:

(1) The appellants, at page 4, state that at the commencement of the proceedings leading up to the order now under review they had separate passenger stations in the City of Los Angeles "none of which is in the vicinity of the other." This statement is inaccurate. California Railroad Commission Exhibit 5 (R. p. 426) shows that the old Salt Lake passenger depot was located directly across the river from the Santa Fe depot, less than one-quarter mile away, while the Santa Fe depot is located only between one-half mile and three-quarters mile from the Southern Pacific's depot. The exhibit referred to also shows the Plaza site and shows that the existing station sites and Plaza site are all within close proximity of each other and within the general "railroad and industrial district" of Los Angeles.

(2) At page 8, the appellants state that the Interstate Commerce Commission in its *First Federal Commission Decision, supra,* issued certain certificates. The Commission made six specific findings of fact in said decision (R. p. 138), but deferred the issuance of certificates to await such further action, if any, as the California Railroad Commission might take. In its second decision,

Second Federal Commission Decision, supra, it reaffirmed its previous findings and issued the *certificates,* which this Court had specified in *First Los Angeles Case, supra.* (pp. 344-348.)

(3) At page 11, the carriers have made a general reference to an ultimate capital expenditure for all recommendations of from twenty-five million to forty-five million dollars. These figures have absolutely no bearing upon the present case. When used by the California Railroad Commission in its *First State Commission Decision, supra* (R. pp. 68-69); they had to do with the "ultimate plan" worked out by engineers of the Commission covering a large number of different projects in Los Angeles County, of which the union passenger station project was but one item. The said ultimate plan was never adopted by the California Railroad Commission. As already pointed out, the construction ordered by the State Commission is to cost approximately $10,000,000 gross and $5,500,000 net new money. The accuracy of these estimates are nowhere challenged in appellants' brief.

(4) At page 11, there appears a statement that "with the exception of the reduced estimated cost and the requirement of the elimination of grade crossings over the Salt Lake and Santa Fe tracks on the river bank * * * the State Commission's order now under review is practically identical with its original orders." Certain differences should be noted. The order now under review differs from the previous orders in that it expressly provided that it is to become effective only "from and after the promulgation by the Interstate Commerce Commission of an order issuing and granting proper and

sufficient certificates or other appropriate order or orders covering and authorizing the construction, extensions, and abandonments herein authorized or directed." (R. p. 134.) Furthermore, the order now under review refers to a definite plan shown on Commission Exhibit 4-b and specifies a definite gross cost of $10,000,000, whereas the first order did neither.

(5) At page 12 of their brief, appellants state that the Railroad Commission's order "involves the acquisition of new land, about forty acres, a portion of which is owned by some of the railroads." The fact is that of the land required under the Plaza plan over two-thirds thereof is now in Southern Pacific ownership. (R. p. 297.)

(6) At page 15, the appellants have erroneously paraphrased what the Supreme Court of California held in the decision under review. The Supreme Court did not hold that the State Commission's order did not violate the constitutional rights of the carriers "in requiring them to abandon adequate passenger facilities," for the reason that the record before the State Commission showed the existing passenger terminal facilities of the carriers to be inadequate. The State Court did not hold that the Railroads could be required to extend their main lines of railroad "to reach new territory not theretofore served by them," for the reason that the Commission's order does not provide for any extension into new territory not theretofore served by said Railroads. Furthermore, the State Court did not direct any railroad to permit another railroad to use its main-line tracks or facilities without compensation.

SUMMARY OF ARGUMENT.

I. THE RAILROAD COMMISSION OF CALIFORNIA UNDER SPECIFIC STATUTORY PROVISIONS IS VESTED WITH AUTHORITY TO REQUIRE RAILROADS TO PROVIDE ADEQUATE PASSENGER TERMINAL FACILITIES, INCLUDING UNION PASSENGER STATIONS.

II. THE TRANSPORTATION ACT, 1920, DID NOT DIVEST THE STATES OF THEIR JURISDICTION TO REQUIRE THE CONSTRUCTION OF UNION PASSENGER STATIONS.

A. Federal legislation will be strictly construed and taken to supersede state authority only to the extent necessary to avoid defeating express provisions of acts of Congress.

B. The Transportation Act, 1920, is silent upon the subject of construction of union stations.

C. In the enactment of the Transportation Act, 1920, Congress did not intend to deprive the states of their jurisdiction over union station matters.

D. The decisions of this Court in the *First Los Angeles Case, supra,* and the *Second Los Angeles Case, supra,* support the view that the Transportation Act, 1920, did not divest the states of their jurisdiction.

E. The California Supreme Court in the decision under review correctly construed the decisions of this Court in this matter.

F. The Railroad Commission's order does not contravene the Commerce Clause of the Federal Constitution or any provision of the Interstate Commerce Act.

G. The order of the State Commission does not require the joint use of main lines or connections between main lines.

III. THE CERTIFICATES ISSUED IN THE ORDER OF THE INTERSTATE COMMERCE COMMISSION ARE LAWFUL. THE QUESTION OF THE LAWFULNESS OF SAID CERTIFICATES WAS NOT DETERMINED BY THE STATE COURT NOR PROPERLY PRESENTED TO SAID COURT FOR DETERMINATION.

A. The certificates issued in the order of the Interstate Commerce Commission are lawful.

B. The question of the lawfulness of said certificates was not determined by the State Court nor properly presented to said Court for determination.

IV. THE STATE COMMISSION ORDER IS A REASONABLE EXERCISE OF THE POLICE POWER AND DOES NOT DEPRIVE THE RAILROADS OF THEIR PROPERTY WITHOUT DUE PROCESS OF LAW OR DENY THEM THE EQUAL PROTECTION OF THE LAWS OR TAKE THEIR PROPERTY FOR PUBLIC USE WITHOUT JUST COMPENSATION IN CONTRAVENTION OF THE FOURTEENTH AMENDMENT TO THE CONSTITUTION OF THE UNITED STATES.

A. In the exercise of the police power, public authority may properly require the construction and operation of union passenger stations so long as the particular order is reasonable.

B. Authorities relied upon by the State Court in the decision under review are sound.

C. The authorities on which the Railroads rely are not in point.

D. The order of the Railroad Commission of California is a reasonable exercise of the police power.

(1) The Southern Pacific passenger terminal facilities are inadequate.

(2) The Atchison, Topeka & Santa Fe and Los Angeles and Salt Lake passenger terminal facilities are inadequate.

(3) The public convenience and necessity require the establishment of a union passenger terminal in the Plaza area.

(4) The Plaza plan.

(5) The Railroads' proposal for improving their passenger terminal facilities.

(6) The estimated cost of the Plaza plan as ordered by the State Commission is less than the sum proposed to be immediately expended by defendant Railroads for separate facilities.

E. The ruling of the California Supreme Court that the findings and order of the California Commission are reasonable and supported by ample evidence must be sustained.

F. The appellants are in error in urging that the State Commission's order requires the joint use of any of their property without compensation first paid.

G. In the issuance of its order the Railroad Commission has not acted under the guise of exercising its police power over grade crossings.

H. The order of the State Commission does not require the Railroads, or any of them, to abandon adequate passenger terminal facilities, but is directed at the existing inadequacies of the passenger terminal facilities of each of said Railroads.

ARGUMENT.

I.

THE RAILROAD COMMISSION OF CALIFORNIA UNDER SPECIFIC STATUTORY PROVISIONS IS VESTED WITH AUTHORITY TO REQUIRE RAILROADS TO PROVIDE ADEQUATE PASSENGER TERMINAL FACILITIES, INCLUDING UNION PASSENGER STATIONS.

The Railroad Commission of California, by specific statutory provisions, is given full power and authority to make an order for the construction, maintenance and operation of a union passenger station, as ordered in the *Third State Commission Case, supra.*

The Railroad Commission of California is created by the California Constitution, Article XII, Sections 22 and 23. (Set forth in full in the appendix to this brief, pp. 6-11.) Under these sections the authority of the legislature to confer additional powers upon the Railroad Commission is expressly declared to be plenary and unlimited by any provision of said Constitution.

The state legislature in the enactment of the Public Utilities Act of California (Stats. 1915, p. 115, as amended), Sections 13(b), 22(a), 30, 31 and 36 (set forth in full in the appendix to this brief, pp. 12-15), conferred upon the State Commission full power and authority to make an order for the construction and operation of a union passenger station, such as the order which has been issued in this matter. Section 36 of the Public Utilities Act provides:

> "Whenever the commission, after a hearing had upon its own motion or upon complaint, shall find that additions, extensions, repairs or improvements to, or changes in, the existing plant, equipment, apparatus, facilities or other physical property of any

public utility or of any two or more public utilities ought reasonably to be made, or that a new structure or structures should be erected, to promote the security or convenience of its employees or the public, or in any other way to secure adequate service or facilities, the commission shall make and serve an order directing that such additions, extensions, repairs, improvements or changes be made or such structure or structures be erected in the manner and within the time specified in said order. If the commission orders the erection of a new structure, it may also fix the site thereof. If any additions, extensions, repairs, improvements or changes, or any new structure or structures which the commission has ordered to be erected, require joint action by two or more public utilities, the commission shall notify the said public utilities that such additions, extensions, repairs, improvements or changes or new structure or structures have been ordered and that the same shall be made at their joint cost, whereupon the said public utilities shall have such reasonable time as the commission may grant within which to agree upon the portion or division of cost of such additions, extensions, repairs, improvements or changes or new structure or structures, which each shall bear. If at the expiration of such time such public utilities shall fail to file with the commission a statement that an agreement has been made for a division or apportionment of the cost or expense of such additions, extensions, repairs, improvements or changes, or new structure or structures, the commission shall have authority, after further hearing to make an order fixing the proportion of such cost or expense to be borne by each public utility and the manner in which the same shall be paid or secured."

In construing the above cited constitutional and statutory provisions, the California Supreme Court in its opinion stated:

> "The Constitution of this state expressly provides that the authority of the legislature to confer powers upon the Railroad Commission is plenary and unlimited by any provision of the Constitution. (Const. of Cal., art. XII, secs. 22 and 23; Pac. Tel. and Tel. Co. v. Eshleman et al., 166 Cal. 640.)
>
> "There can be no question that the legislature by the Public Utilities Act (Stats. 1915, chap. 91, p. 115), sections 13b, 22a, 30, 31 and, particularly by section 36 thereof, has conferred upon the Railroad Commission powers broad enough to include the ones sought to be exercised by said Commission herein." (*Second State Court Case.*) (R. pp. 192, 193.)

Section 36 of the Public Utilities Act, it will be noted, covers the cost of joint construction by two or more public utilities. It gives to the State Commission specific authority to fix the *site* of any *new* structure. It sets up the necessary machinery for determining the portion of the cost of the additions, extensions, or new structure to be borne by each of the participating public utilities. The statute, therefore, meets the requirements prescribed by this Court in the *Second Los Angeles Case, supra,* (p. 69) in the establishment of "tribunals to apportion the expenditures and cost as between the carriers."

II.

THE TRANSPORTATION ACT, 1920, DID NOT DIVEST THE STATES OF THEIR JURISDICTION TO REQUIRE THE CONSTRUCTION OF UNION PASSENGER STATIONS.

In construing the Transportation Act of 1920, and in considering its effect upon the jurisdiction of the states over union station matters, we must look to the purpose and intention of Congress in the enactment of said legislation. (*Savage v. Jones* (1912), 225 U. S. 501, 533.)

Under Point I of the Railroads' brief (pp. 27 et seq.), it is contended that all jurisdiction of the states over the matter of union passenger stations is at an end for the reason that Congress has dealt with the subject in a limited manner. This contention is unsound and leaves out of consideration entirely the question of whether it was the *purpose* and *intention* of Congress to exclude the states from further action in such matters. Most assuredly Congress may take action on a certain subject as by providing that the Interstate Commerce Commission shall have authority to issue certificates covering extensions and abandonments of railroad tracks incidental to the establishment of a union passenger station, and yet clearly manifest a purpose and intention that the states should retain jurisdiction which they theretofore possessed under the police power to require the construction and operation of union passenger stations.

A. Federal Legislation will be Strictly Construed and Taken to Supersede State Authority Only to the Extent Necessary to Avoid Defeating Express Provisions of Acts of Congress.

It is well settled that while the federal authority under the commerce clause is paramount, even though trenching upon the reserve power of the state, that where Con-

gress' occupation of the field is only partial, a state is left free to act as to matters not covered by or repugnant to the federal legislation.

Savage v. Jones (1912), 225 U. S. 501, 533;
Sligh v. Kirkwood (1915), 237 U. S. 52;
M. K. & T. Rwy. Co. v. Harris (1914), 234 U. S. 412;
Missouri Pacific Rwy. Co. v. Larabee Flour Mills Co. (1909), 211 U. S. 612;
Atlantic Coast Line R. Co. v. Georgia (1914), 234 U. S. 280, 293;
Reid v. Colorado (1912), 187 U. S. 137, 149.

It is well settled that federal legislation so trenching upon the power of a state will be strictly construed, that is, it will be taken to supersede state authority only to the extent necessary to avoid defeating express provisions of the acts of Congress.

M. K. & T. Rwy. v. Haber (1898), 169 U. S. 613, 623;
Savage v. Jones (1912), 225 U. S. 501, 533;
Illinois Central Rwy. Co. v. Public Utilities Com. (1918), 245 U. S. 493, 510;
Lehigh Valley Rwy. Co. v. Public Utility Com. (1928), 278 U. S. 24, 35.

In the leading case of *Savage v. Jones, supra,* it was held that the passage by Congress of the Food and Drug Act of 1906, which, among other things, prohibited misbranding, did not prevent the states from regulating the sale and requiring to be affixed a statement of ingredients and minimum percentage of fat and proteins. Mr. Justice Hughes stated the general rule as follows (p. 533):

"Is, then, a denial to the state of the exercise of its power for the purposes in question necessarily implied in the Federal statute? For when the question is whether a Federal act overrides a state law, the entire scheme of the statute must, of course, be considered, and that which needs must be implied is of no less force than that which is expressed. If the purpose of the act cannot otherwise be accomplished —if its operation within its chosen field else must be frustrated and its provisions be refused their natural effect—the state law must yield to the regulation of Congress within the sphere of its delegated power. *Texas & P. R. Co. v. Abilene Cotton Oil Co.*, 204 U. S. 426, 51 L. ed. 553, 27 Sup. Ct. Rep. 350, 9 Ann. Cas. 1075; *Northern P. R. Co. v. Washington*, 222 U. S. 370, 378, ante, 237, 239, 32 Sup. Ct. Rep. 160; *Southern R. Co. v. Reid*, 222 U. S. 424, 436, ante, 257, 260, 32 Sup. Ct. Rep. 140.

"But the intent to supersede the exercise by the state of its police power as to matters not covered by the Federal legislation is not to be inferred from the mere fact that Congress has seen fit to circumscribe its regulation and to occupy a limited field. In other words, such intent is not to be implied unless the act of Congress, fairly interpreted, is in actual conflict with the law of the state. This principle has had abundant illustration. *Chicago, M. & St. P. R. Co. v. Solan*, 169 U. S. 133, 42 L. ed. 688, 18 Sup. Ct. Rep. 289; *Missouri K. & T. R. Co. v. Haber*, 169 U. S. 613, 42 L. ed. 878, 18 Sup. Ct. Rep. 488; *Reid v. Colorado*, 187 U. S. 137, 47 L. ed. 108, 23 Sup. Ct. Rep. 92, 12 Am. Crim. Rep. 506; *Pennsylvania R. Co. v. Hughes*, 191 U. S. 477, 48 L. ed. 268, 24 Sup. Ct. Rep. 132; *Crossman v. Lurman*, 192 U. S. 189, 48 L. ed. 401, 24 Sup. Ct. Rep. 234; *Asbell v. Kansas*, 209 U. S. 251, 52 L. ed. 778, 28 Sup. Ct. Rep. 485, 14 Ann. Cas.

1101; *Northern P. R. Co. v. Washington*, 222 U. S. 370, 379, ante, 237, 240, 32 Sup. Ct. Rep. 160; *Southern R. Co. v. Reid*, 222 U. S. 424, 442, ante, 257, 262, 32 Sup. Ct. Rep. 140."

In the earlier case of *Missouri K. T. Rwy. Co. v. Haber*, *supra*, it was held that the Federal Animal Industry Act making it a misdemeanor for any person or corporation to transport cattle known to be affected with contagious disease, did not prevent a state from imposing a civil liability for damages sustained by owners of domestic cattle by reason of the importation of such diseased cattle. Mr. Justice Harlan stated the rule as follows (p. 623):

"May not these statutory provisions stand without obstructing or embarrasing the execution of the act of Congress? This question must of course be determined with reference to the settled rule that a statute enacted in execution of a reserved power of the state is not to be regarded as inconsistent with an act of Congress passed in the execution of a clear power under the Constitution, unless the repugnance or conflict is so direct and positive that the two acts cannot be reconciled or stand together. *Sinnot v. Davenport*, 63 U. S. 22 How. 227, 243."

In *Illinois Central Railroad Company v. Public Utilities Commission of Illinois*, 245 U. S. 493, Mr. Justice Van Devanter said (p. 510):

"In construing Federal statutes enacted under the power conferred by the commerce clause of the Constitution the rule is that it should never be held that Congress intends to supersede or suspend the exercise of the reserved powers of a state, even where that may be done, unless, and except so far, as its purpose to do so is clearly manifested. *Reid v.*

Colorado, 187 U. S. 137, 148, 47 L. ed. 108, 114, 23 Sup. Ct. Rep. 92, 12 Am. Crim. Rep. 506; *Cummings v. Chicago,* 188 U. S. 410, 430, 47 L. ed. 525, 531, 23 Sup. Ct. Rep. 472; *Savage v. Jones,* 225 U. S. 501, 56 L. ed. 1182, 32 Sup. Ct. Rep. 715; *Missouri K. & T. R. Co. v. Harris,* 234 U. S. 412, 419, 58 L. ed. 1377, 1382, L. R. A. 1915E, 942, 34 Sup. Ct. Rep. 790. This being true of an act of Congress, it is obvious that an order of a subordinate agency, such as the Commission, should not be given precedence over a state rate statute otherwise valid, unless, and except so far as, it conforms to a high standard of certainty."

In the recent case of *International Shoe Company v. Pinkus,* 278 U. S. 261, decided on January 2, 1929, Mr. Justice Butler said (p. 265):

"The general rule is that an intention wholly to exclude state action will not be implied unless, when fairly interpreted, an Act of Congress is plainly in conflict with state regulation of the same subject. *Savage v. Jones,* 225 U. S. 501, 533; *Illinois Central R. R. Co. v. Public Utilities Commission,* 245 U. S. 493, 510; *Merchants Exchange v. Missouri,* 248 U. S. 365."

In *Snyder v. New York C. & St. L. R. Co.* 118 Ohio St. 72, 160 N. E. 615, an eminent domain action had been brought for the purpose of condemning land for railroad purposes. The defendant land owner raised the point that the plaintiff railroad company was not a *de jure* corporation for the reason that, although it had complied with the laws of the affected states in effecting a consolidation of a number of existing railroad companies, the plaintiff had not secured the authority of the Interstate Commerce Commission under Section 5 of the

Interstate Commerce Act, added by the Transportation Act, 1920. Section 5 is the section of the Act which contains the so-called railroad consolidation provisions. The Supreme Court of Ohio held that the authority of the states over railroad consolidations continued notwithstanding the provisions of Section 5 of the Interstate Commerce Act. At page 620, the Court said:

> "The cases which are found most helpful to the instant controversy are those which have declared that the intent of Congress to supersede the exercise of the police power by the states will not be inferred unless the act of Congress, fairly interpreted, is in actual conflict with the state law. This was expressly stated in *Savage v. Jones, State Chemist*, 225 U. S. 501, 32 S. Ct. 715, 56 L. ed. 1182, in deciding the conflict between the Food and Drug Act of Indiana (Act 1907, c. 206) and the Federal Food and Drug Act of 1906. (21 USCA Section 1 et seq.)"

Continuing, the Court said:

> "These and other cases clearly show that every act of Congress must be interpreted in the light of the purposes to be served, the relation to the public welfare, and the particular language employed in the act itself. In the light of all those cases, we find nothing in the Transportation Act of 1920, prohibiting consolidations under state statutes, where no anti-trust legislation is violated, during the interim of formulation and adoption of a complete plan of unification. It seems more reasonable to hold that Congress has merely surveyed the field without fully occupying it, and that section 5 of the Interstate Commerce Act, as amended, operates as a caveat and a warning, but not as an injunction."

In *Snyder v. New York, Chicago & St. Louis Railroad Co.*, 278 U. S. 573, the Supreme Court of the United States

on December 3, 1928, dismissed the writ of error. Thereafter, on January 2, 1929, the Court substituted for said order the following order (278 U. S. 578):

> "This case is affirmed on the ground that Section 407 of the Transportation Act of 1920, 41 Stat. at L. 480, ch. 91, U. S. C. title 49, Sec. 5, amending Section 5 of the Interstate Commerce Act, has not as yet become applicable to cases like this."

B. The Transportation Act, 1920, is Silent Upon the Subject of Construction of Union Stations.

The Interstate Commerce Act is silent upon the subject of the construction of union passenger stations. The Transportation Act, 1920, added nothing in this regard. As was said by this Court, *Second Los Angeles Case, supra* (p. 67):

> "In weighing the effect of the Transportation Act, it should be noted that in this important measure affecting associations between interstate carriers of a compulsory character, *there is nowhere express authority for the establishment of union passenger stations, compulsory or otherwise.*"

Appellants point to Paragraphs 3 and 4 of Section 3 (added by Section 405, Transportation Act, 1920), and Paragraphs 18-21 of Section 1 of the Interstate Commerce Act (added by Section 402, Transportation Act, 1920), in support of their contention that Congress has completely occupied the field. (Said provisions of the Interstate Commerce Act are set forth in the appendix to this brief, pp. 1-5.) Of the provisions mentioned, Paragraph 4 of Section 3 is the only one applicable to terminal facilities. It applies only to *existing* terminals and provides in brief that the Commission, if it finds it to be in the

public interest and practicable without substantially impairing the ability of the carrier owning or entitled to the enjoyment of terminal facilities to handle its own business, may "require the use of any such terminal facilities, including main line track or tracks for a reasonable distance outside of said terminal" by a carrier or carriers on such terms and for such compensation as the carriers may agree upon, or as the Commission may fix in the event the carriers fail to agree. The provisions of Paragraph 4 of Section 3 obviously apply only to *existing* terminal facilities and have no bearing whatever on the construction of *new* stations.

Paragraphs 18-21 of Section 1 do not apply to *terminals.* They do, however, apply to certain *incidents* which necessarily result from the construction and operation of a terminal station as was held in the *First Los Angeles Case, supra.* Under said provisions of the Interstate Commerce Act the Commission must make its findings and issue its certificates approving the proposed extensions and abandonments of railroad lines, and find that the expense involved will not impair the ability of the carriers concerned to perform their duty to the public. Thus, as was said in the *First Los Angeles Case, supra,* the Interstate Commerce Commission under Paragraphs 18-21 of Section 1 possesses the "means of control over installation of such new union stations," and such a certificate is required "as a condition precedent to the validity of any action by the carriers or of any order by the State Commission."

The limited "supervisory" jurisdiction of the Interstate Commerce Commission which it possesses over the matter of the construction of union stations is not an

occupation of the field of regulation of such matters. There can never be a conflict between state authority and federal authority. A state can never carry out its mandate directing the construction of a station until the Interstate Commerce Commission as a "condition precedent" first makes its "supervisory" findings (1) that public convenience and necessity require the proposed construction and abandonments, and (2) that the expense involved will not impair the ability of the carriers to perform their duty to the public. These "supervisory" findings of the Interstate Commerce Commission have been made (*Second Federal Commission Decision, supra*) (R. pp. 144, 145, 153, 154), and the order of the State Commission has become effective. (R. pp. 197, 198.)

C. In the Enactment of the Transportation Act, 1920, Congress Did Not Intend to Deprive the States of Their Jurisdiction Over Union Station Matters.

In determining the purpose and intent of Congress on the subject of union passenger stations, recourse may be had both to the proceedings by Congress during consideration by it of the Transportation Act, 1920, and to the language of the Act itself.

The propriety of referring to statements made by a committee member in charge of a bill, of course, is well recognized.

U. S. v. St. Paul Rwy. (1918), 247 U. S. 310, 315-318;

Duplex Printing Co. v. Deering (1921), 254 U. S. 443, 474-477;

Wisconsin Passenger Fare Case (1922), 257 U. S. 563, 589;

N. Y. v. Winfield (1917), 244 U. S. 147, 150.

It is significant to note the statement appearing in the footnote below,[1] made by Congressman Esch, chair-

(1) The following appears in vol. 58, p. 9, Congressional Record, 66th Cong., 1st sess., Nov. 15, 1919, pp. 8578, et seq.:

"Mr. McClintic. Mr. Chairman, I offer the following amendment which I send to the desk and ask to have read.

"The clerk read as follows:

Amendment offered by Mr. McClintic: Page 55, line 9, after the word 'prescribe,' insert:

"'*Provided further*, that the commission is hereby given authority to require a carrier to maintain his present arrangement or to make new arrangements relative to the joint use of depots, upon such terms as shall be found by the commission to be just and reasonable. No carrier shall be allowed to discontinue the use of a depot in connection with another carrier until proper application has been made to the commission.'"

(There followed a statement by Mr. McClintic showing that his amendment was induced by apprehension that the advantages of joint depots enjoyed by the public under the Railroad Administration would be denied after termination of federal control and that the proposed bill took from the State Commissions their powers in respect thereof.)

"Mr. Esch (8579). Mr. Chairman, the matter which the gentleman from Oklahoma seeks to reach by his amendment lies almost wholly within the police power of the several States. There have been amendments offered to this bill seeking to preserve such police powers. The committee in framing the bill sought not to encroach upon such powers. The matter of depots and joint use of depots is practically in the jurisdiction of the State Commissions, and all but one of the States have such commissions. In such small matters, the detail should be left within the jurisdiction of the State authorities, who know the conditions, and know how best to meet the needs. There is, however, a provision in this bill providing for the joint use of terminals.

"Mr. McClintic. Will the gentleman yield?

"Mr. Esch. But that power will be exercised, I have no doubt, mainly in connection with the terminals in the large cities and in the congested centers. Due to the prohibitive cost of land, it is necessary to get a greater use out of *existing terminals* by giving to some regulatory authority, like the Interstate Commerce Commission, the right to order the joint use of such terminals, but that that power should be exercised as to depots in small communities is not contemplated. That power should be left, as we leave it, to the regulatory bodies of the several States. I now yield to the gentleman from Oklahoma. (Italics ours.)

"Mr. McClintic. Does the gentleman think that the State commissions will have a sufficient amount of jurisdiction to handle a question of this kind?

man of the House Committee, and in charge of the bill (known as Esch-Cummins bill) which, after some changes,

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"Mr. Esch. Most certainly. They do under the powers granted in my State, and I think it is true in many States. I do not know the situation in Oklahoma.

"Mr. McClintic. The gentleman does not feel that this bill takes away any of their jurisdiction?

"Mr. Esch. No.

"Mr. McClintic. Mr. Chairman, upon the statement of the chairman of the committee I will be glad to withdraw the amendment.

"The Chairman. The gentleman from Oklahoma asks unanimous consent to withdraw his amendment. Is there objection?

"Mr. Linthicum. Mr. Chairman, I object.

* * * * * * *

"The Chairman (8582). The question is on agreeing to the amendment offered by the gentleman from Oklahoma (Mr. McClintic).

"The question was taken and the amendment was rejected."

The bill (H. R. 10,453) had been reported by the House with its report, No. 456 (Cong. Rec., vol. 58, 66th Cong., 1st sess., p. 8265), and was debated (Ibid. 8309-8692). In the proposed bill under consideration at the time the above remarks were made by Congressman Esch the provision in respect of joint use of terminals (H. R. 10,453, sec. 405 (2)) were not the same as finally enacted. The provisions of the original bill and the changes made by the Senate amendments and the conference committee are outlined in the following, taken from House Report No. 650 (66th Cong., 2d sess.) submitted by Mr. Esch with H. R. 10,453 from committee of conference (59th Cong. Rec. p. 3263; MacVeagh on Transportation Act, 1920, p. 252):

"Section 405 of the House bill provided that the commission might require the terminal of any carrier to be open to the traffic of other carriers upon such terms and for such compensation as the commission might prescribe. The Senate amendment, in section 11, provided that the transportation board might require one carrier to permit another carrier to use its 'terminal or other facilities, including main-line track or tracks for a reasonable distance outside of such terminals,' on such terms as the carriers might agree on or as the board might fix. Section 405 of the conference bill contains provisions on this subject similar to those in the Senate amendment. It is provided that the commission, if it is found to be in the public interest and practicable, may require one carrier to allow another to use its terminal facilities, 'including main-line track or tracks for a reasonable distance outside of such terminal,' on such terms as the carriers may agree upon or as the commission may fix, subject to the right, however, of the carrier whose terminal facilities are thus thrown open to sue for any damages sustained or any compensation owed."

became the Transportation Act, 1920. The statement in question shows not only the view that authority over union stations was in the State Commissions prior to 1920, but also that the committee, in framing the new bill, had so sought not to encroach on such state authority, and that while there was a provision in respect of joint use of existing terminals, its purpose was to empower the Commission to conserve revenues from the standpoint of the whole transportation service by making full use of existing facilities, although owned by an individual carrier.

The statement was quoted with approval in *North Carolina Corporation Commission v. Southern Railway* (Selma Station case) (1923), 185 N. C. 435, and in *First Federal Commission Decision, supra* (p. 428). (Appendix to this brief, pp. 40-42.)

D. The Decisions of this Court in the First Los Angeles Case, Supra, and the Second Los Angeles Case, Supra, Support the View that the Transportation Act, 1920, Did Not Divest the States of Their Jurisdiction.

The two decisions of this Court in the *First Los Angeles Case, supra,* and the *Second Los Angeles Case, supra,* show that this Court was, and is of the opinion that the jurisdiction of the California Railroad Commission continued and may be exercised and its orders in this regard may become effective after the Interstate Commerce Commission has made the necessary findings and issued the necessary certificates.

In the *First Los Angeles Case, supra* (p. 346), this Court said that the situation comes "within paragraphs 18 to 21 of Section 402 and requires a certificate of the Interstate Commerce Commission as a condition precedent

to the validity of any action of the carriers or *of any order by the state commission.*"

Again at page 348 of the same case, this Court said:

> "Until the Interstate Commerce Commission shall have acted under Paragraphs 18 to 21 of Section 402 of the Transportation Act, the respondent railways cannot be required to provide a new interstate union station and to extend their main tracks thereto *as ordered by the State Railroad Commission.*"

In the *Second Los Angeles Case, supra* (p. 61), this Court interpreted its first decision as declaring that the necessary certificates must first be secured from the Interstate Commerce Commission

> "as a condition precedent to the validity of any action by the carriers or *of any order by the State Railroad Commission,* and that until the Interstate Commerce Commission had acted under those paragraphs, the carriers could not be required to provide a new union station or to extend their main tracks thereto *as ordered by the State Railroad Commission.*"

In these various references to an *order* of the State Railroad Commission, to be conditioned only upon the issuance of certificates of the Interstate Commerce Commission under Paragraphs 18 to 21 of Section 402, we believe that this Court has shown a continuing conviction that Congress did not intend to take from the states the power to make such order. Under these two decisions, read together, we believe there is no reasonable doubt that Congress in enacting the Transportation Act, 1920, did not take from the State of California its jurisdiction to make the mandatory order which the said Com-

mission has actually made conditioned only upon the issuance of the necessary certificates by the Interstate Commerce Commission.

E. The California Supreme Court in the Decision Under Review Correctly Construed the Decisions of this Court in this Matter.

The California Supreme Court in construing the decisions of this Court in the *First Los Angeles Case, supra,* and the *Second Los Angeles Case, supra,* and in concluding that Congress in the enactment of the Transportation Act, 1920, had not entered the field of regulation of union passenger station matters so as to divest the states of their jurisdiction in the premises stated:

> "It is urged, however, by petitioners that even though it be true that the Interstate Commerce Commission has no power to enter the order for the erection and maintenance of a union station, the fact that it has some powers given it over the general subject matter indicates that Congress 'has entered the field' of regulation respecting the establishment of union stations to such an extent as to automatically terminate the state's power to deal with that subject. The most decisive answer to this question is that the language of the decision of the Supreme Court of the United States, in the first Los Angeles Terminal case, is to the effect that an order is to be made by the state commission, conditioned only upon the proper findings and certificates of the Interstate Commerce Commission.
>
> "If we examine into the question independently of said decision of the Supreme Court of the United States we find that the Supreme Court of California, prior to the Transportation Act of 1920, assumed, at least, that the Railroad Commission had jurisdiction

to order the erection and maintenance of a union station, for in the case of Civic Center Assn. v. Railroad Commission, 173 Cal. 441, this court directed the Commission to proceed with a hearing and determination on the merits of a complaint which included a demand for a union station order. Later, in the case of Atchison, Topeka & Santa Fe Railway Co. v. R. R. Comm., supra, this court held that the Railroad Commission had been divested of such power by the Federal Transportation Act of 1920, and if this conclusion be out of harmony with the view of the United States Supreme Court, as the two decisions of that court with reference to this matter show it to be, then, assuredly, the power mentioned, never having been divested, is vested at present in the State Railroad Commission." (R. p. 192.)

"While it is beyond question that if the Congress of the United States had 'occupied the field' of providing for the erection and maintenance of union passenger stations, the power of the state in that matter would have been supplanted and no coordinate power would exist in the State Commission, this situation does not exist under the decision of the United State Supreme Court to the effect that Congress has merely occupied the field of supervising and ascertaining the jurisdictional facts with relation to the establishment of such stations." (R. p. 193.)

These holdings of the California Supreme Court, we respectfully submit, are in full accord with the decisions of this Court in the *First Los Angeles Case, supra,* and *Second Los Angeles Case, supra.*

F. The Railroad Commission's Order Does Not Contravene the Commerce Clause of the Federal Constitution or Any Provision of the Interstate Commerce Act.

The carriers devote pages 27 to 61 of their brief to the proposition that the Railroad Commission's order contravenes the Commerce Clause of the Federal Constitution and certain provisions of the Interstate Commerce Act.

In the light of the facts of this case and in view of the authorities above developed, we submit that the California Supreme Court was clearly right when it held that there was no merit to these contentions. The appellants in this regard seek to make it appear that the State Commission's order requires them to perform seven different and separate classes of acts. (Brief of Appellants, pp. 27-29.) That this contention is highly fanciful is readily apparent from an examination of the Commission order. (R. p. 133.) The order requires one principal act, that is, the construction of a union passenger station. In so far as the collateral acts are to be performed, they are merely what this Court has properly termed the "essential incidents" of said station. (*First Los Angeles Case, supra,* p. 341.) The State Commission in its order referred to these incidental acts as such "as may be reasonably necessary and incidental to the use of said union passenger station." (R. p. 133.)

The incidental matters referred to by the railroads are such matters as the extensions of lines, the construction of track connections and certain track abandonments in so far as these matters are necessarily involved in the union station project. (Brief of Appellants, pp. 35-41.) In support of their contentions that Congress has occupied

the field of regulation of these incidentals, appellants rely particularly on paragraphs 3 and 4 of section 3 and paragraphs 18-21 of section 1 of the Interstate Commerce Act. As pointed out above in this brief, pp. 27-29, we find that paragraph 4 of section 3 is the only provision applicable to terminal facilities. It applies only to *existing* terminals and provides, in brief, that the Commission if it be in the public interest and practicable without substantially impairing the ability of the carrier owning or entitled to the enjoyment of terminal facilities to handle its own business, may "require the use of any such terminal facilities, including main-line track or tracks for a reasonable distance outside of said terminal" by a carrier or carriers on such terms and for such compensation as the carriers may agree upon, or as the Commission may fix in the event the carriers fail to agree. The provisions of paragraph 4 of section 3 obviously apply only to *existing* terminal facilities and have no bearing whatever on the construction of *new* stations. None of the provisions of the above mentioned sections of the Interstate Commerce Act give to the Commission the power to *require* the performance of any of the *incidental* acts. The appellants have referred to no provisions of the Interstate Commerce Act which purport to give this power to the Federal Commission. Although it is true that the Interstate Commerce Act contains in various portions thereof general language referring to the construction of facilities, the extensions and abandonments of lines and the general use of tracks, this Court held in *Second Los Angeles Case, supra,* in commenting on its earlier decision in *Alabama and Vicksburg Railway Co. v. Jackson & Eastern Railway Co.*, 271 U. S. 244, that

such language is too general to be properly construed as referring to union passenger stations. (*Second Los Angeles Case,* pp. 52; 66-67; Appendix to this brief, pp. 115-118.)

G. The Order of the State Commission Does Not Require the Joint Use of Main Lines or Connections Between Main Lines.

Appellants in their brief (p. 35) urge that the order of the State Commission requires the joint use of main-line tracks and connections between main lines and thus invades the jurisdiction of the Interstate Commerce Commission. *Alabama Railway v. Jackson Railway,* 271 U. S. 244, is cited for the proposition that jurisdiction to issue such orders is exclusively delegated to the Interstate Commerce Commission.

The answer to this contention is that the order does not have the effect attributed to it by appellants. (See terms of order R. p. 133.) Under the order appellants are not required to jointly use main-line tracks or connect such tracks. It was recognized by this Court in the *First Los Angeles Case, supra* (p. 340), that each of the carriers could build its own main lines to the station without jointly using main-line tracks. In that decision it was said:

> "The changes to be effected under the order will require, in the abandonment of the Southern Pacific main track on Alameda Street for 3 miles, a joint use by the Southern Pacific of main tracks on the river bank with either the Salt Lake or the Santa Fe, or the construction of its own main tracks on one side or the other along the river bank. The main tracks of the Salt Lake must be extended across the Los An-

geles river on a viaduct to the area selected for the union station. The main track of the Santa Fe runs along the river side of the selected area, but an extension of its main tracks will have to be made to bring it into the new station."

Appellants point to Commission's Exhibit 6 (R. p. 227) in support of their contention that the State Commission order requires joint use of main-line tracks and main-line connections. This exhibit is not a part of the Commission order and obviously the railroads are not required to connect their main-line tracks as suggested in said exhibit. The requirement of the Commission order is that the railroads construct and operate a station in substantial compliance with Commission Exhibit 4-b. (R. p. 267.)

III.

THE CERTIFICATES ISSUED IN THE ORDER OF THE INTERSTATE COMMERCE COMMISSION ARE LAWFUL. THE QUESTION OF THE LAWFULNESS OF SAID CERTIFICATES WAS NOT DETERMINED BY THE STATE COURT NOR PROPERLY PRESENTED TO SAID COURT FOR DETERMINATION.

A. The Certificates Issued in the Order of the Interstate Commerce Commission Are Lawful.

Under Point II of their brief (pp. 61-71) appellants urge that the order of the Interstate Commerce Commission granting the certificates is void inasmuch as it was issued upon the petition of the State Commission and the City of Los Angeles and not upon the petition of the railroads.

The order of the State Commission, as above noted, provided that it should

"become effective from and after the promulgation by the Interstate Commerce Commission of an order issuing and granting proper and sufficient certificates or other appropriate order or orders covering and authorizing the construction, extensions and abandonments herein authorized or directed, it being the intent of this Commission that the issuance of such certificates or other order or orders on the part of the Interstate Commerce Commission shall be and constitute a condition precedent to the effectiveness of the said order of this Commission." (R. p. 134.)

Pursuant to the instructions in the State Commission order, its attorney filed a petition with the Federal Commission asking for the issuance of such order. In this regard the *Second Federal Commission Decision, supra*, p. 493 (R. p. 142) states:

"The California State Commission has filed with us its petition for final order * * *. The petition of the City of Los Angeles for the issuance of certificates and the making of final order is somewhat more extensive than the petition of the California State Commission, but the relief sought is the same."

and the report further shows that the Railroads filed answers to both petitions, hearings were had and on stipulation of counsel the testimony taken before the State Commission was received in evidence. (R. p. 143.) Thereafter the Commission issued its certificate and order. (R. pp. 153, 154.)

There are no words of limitation to be found in Paragraphs 18-20 of Section 1 of the Interstate Commerce Act which indicate that the jurisdiction of the Commission to act thereunder is limited to cases where the Railroads are the applicants. The language of the para-

graphs is broad and confers general jurisdiction on the Commission to issue the certificates upon application.

In the proceedings in question the Interstate Commerce Commission could also properly act under Paragraph 21 of Section 1, the proceeding on the part of the City of Los Angeles having been in the form of a complaint. (R. p. 135.) Paragraph 21 of Section 1 provides that the Commission may act thereunder "upon complaint or upon its own initiative."

Furthermore, we believe that the decisions of this Court in *First Los Angeles Case, supra,* and *Second Los Angeles Case, supra,* are definite authorities in support of the validity of the certificates. This Court in *First Los Angeles Case, supra,* knowing full well that the City of Los Angeles was before the Commission in an *adversary* proceeding, pointed out with much care and detail the authority of the Interstate Commerce Commission to issue the certificates prayed for. We believe it unreasonable to assume that this Court would have taken the pains to make its analysis on this subject if in fact no such power existed in such case. That the Court fully understood the situation appears from the last two paragraphs of said decision (pp. 347-348):

> "We were advised by statements at the bar after the California supreme court handed down its decision in this case, the city of Los Angeles filed a petition with the Interstate Commerce Commission, asking for an order to provide, maintain, and use a union station; that a hearing followed, and that, pending the decision in this court, the matter is held under consideration.
>
> "For the reasons given, we think the course taken by the city of Los Angeles was the correct one. Until

> the Interstate Commerce Commission shall have acted under Paragraphs 18 to 21 of Section 402 of the Transportation Act, the respondent railways cannot be required to provide a new interstate union station, and to extend their main tracks thereto, as ordered by the State Railroad Commission."

Then, again, in *Second Los Angeles Case, supra,* this Court had before it not merely the entire complaint of the City of Los Angeles before the Interstate Commerce Commission, but also both decisions of the Interstate Commerce Commission and other pertinent records. Being fully informed of the nature of the proceeding which the City of Los Angeles had brought before the Interstate Commerce Commission and after a second review of the situation, this Court explained its first decision as holding

> "until the Interstate Commerce Commission had acted under those paragraphs the carriers could not be *required* to provide a new union station or to extend their main-line tracks thereto *as ordered by the State Railroad Commission.*" (p. 61.)

In the matter of findings and certificates the Interstate Commerce Commission acted in exact accord with the two decisions of this Court in this matter.

B. The Question of the Lawfulness of Said Certificates Was Not Determined By the State Court Nor Properly Presented to Said Court For Determination.

The Railroads did not seek to challenge the validity of the order of the Interstate Commerce Commission granting the certificates in question, as they might properly have done under Judicial Code, Sections 212, 213,

as amended, 28 U. S. C. 45a. (See also 28 U. S. C. 45, 46, 47.) No petition for rehearing was filed with the Interstate Commerce Commission nor was any action filed in the United States District Court challenging the validity of the order. It is well established that any party to a proceeding before the Interstate Commerce Commission is a proper party to initiate proceedings in the United States District Court under the Urgent Deficiencies Act (28 U. S. C. 45a) to set aside an order of the Commission. The fact that the order is permissive does not preclude review if by that term is meant an order which, in contradistinction to one compelling performance, authorizes a carrier to do some act otherwise prohibited.

B. & O. R. Co. v. United States (Chicago Junction Case) (1924), 264 U. S. 258, 264;

Chesapeake & O. R. Co. v. United States, ___ U. S. ___ (not yet officially reported, see Oct. 1930, Term, No. 73, Advance Opinions, 75 L. ed. 445);

Colorado v. United States (1926), 271 U. S. 153, 161;

Texas v. United States (1922), 258 U. S. 204;

Piedmont & N. O. Co. v. United States (1930), 280 U. S. 469, 478.

In *Baltimore & Ohio R. Co. v. United States, supra*, the Interstate Commerce Commission on application of the New York Central Railroad under Paragraph 18, Section 1, and Paragraph 2 of Section 5 of the Act to Regulate Commerce, as amended by the Transportation Act, authorized the acquisition of certain independent belt line railroads serving Chicago. The permissive order was issued over the protest of plaintiff railroads who had intervened in the proceeding before the Interstate Com-

merce Commission. This Court in reversing a decree of the District Court dismissing plaintiffs' bill held:

"The defendants * * * insist that the plaintiffs have no interests which entitle them to assail the order. (p. 262.)

"Nor would the further fact that the order is permissive preclude review if by that term is meant an order which, in contradistinction to one compelling performance, authorizes a carrier to do some act otherwise prohibited. Orders entered under the Act of June 18, 1910, chap. 309, 36 Stat. at L. 539, 547, Comp. Stat. Paragraph 8566, 4 Fed. Stat. Anno. 2d ed. p. 396, amending Paragraph 4 of the Interstate Commerce Act, are of this character. That section prohibits carriers from charging more 'for a shorter than for a longer distance over the same line or route in the same direction' without obtaining authority from the Commission. A suit will lie to set aside an order granting such authority, and to enjoin action by the carrier thereunder. *Skinner & E. Corp. v. United States,* 249 U. S. 557, 562, 63 L. ed. 772, 776, 39 Sup. Ct. Rep. 375. Compare *United States v. Merchants & Mfrs. Traffic Asso.,* 242 U. S. 178, 61 L. ed. 233, 37 Sup. Ct. Rep. 24." (pp. 263, 264.)

"The plaintiffs may challenge the order because they are parties to it. The Judicial Code, Sec. 212 (originally the Commerce Court Act, June 18, 1910, chap. 309, 36 Stat. at L. 542, Comp. Stat. Sec. 1005), declares that any party to a proceeding before the Commission may, as of right, become a party to 'any suit wherein is involved the validity of such order.' The section does not in terms provide that such party may institute a suit to challenge the order. But this is implied. For, otherwise, there would in some cases be no redress for the injury inflicted by an illegal order. Moreover, the fact of intervention,

allowed as it was, implies a finding by the Commission that the plaintiffs have an interest." (pp. 267, 268.)

We thus find that the Railroads failed to directly challenge the validity of the Federal Commission order in this matter as they might have done. Their attempt to collaterally attack the order of the State Court was obviously improper and that Court was not obliged to pass upon the lawfulness of said order.

Upon the question of the sufficiency of the certificates issued by the Federal Commission the State Court said:

"As a last attack upon the order, the carriers contend it is conditional and not absolute, indefinite and uncertain. It is contended that because the order recites that it shall become effective upon the promulgation by the Interstate Commerce Commission of an order issuing and granting proper and sufficient certificates or orders covering and authorizing the constructions, extensions and abandonments authorized in said order of the Railroad Commission, and that the issuance of such order or orders by the Interstate Commerce Commission shall be a condition precedent to the effectiveness of the order of the Railroad Commission, the order is void for uncertainty. Petitioners ask who is to say whether or not such certificates as might be made by the Interstate Commerce Commission are 'proper and sufficient certificates.' We think this question is not properly raised here. The certificates on their face are proper and sufficient and comply with the decision of the Supreme Court of the United States; the Railroad Commission is so considering them, as did the Interstate Commerce Commission. No question has been raised by anyone as to their insufficiency and since they had been issued and were in existence and be-

came a part of the order of the Railroad Commission at the time the writ of review was issued by this court, no uncertainty existed at such time as to their content and no dispute existed as to their sufficiency." (*Third State Commission Decision, supra.*) (R. pp. 197, 198.)

Appellants in their brief (p. 63) submit that they "could not by injunction or otherwise correct the Commission's action because it was not mandatory," citing *United States v. L. A. & S. L. Ry. Co.* (1927), 273 U. S. 299. In that decision (p. 310) it was held that the report of the Interstate Commerce Commission there under attack (report fixing value of railroad properties under Section 19a of the Interstate Commerce Act) was one "which does not command the carrier to do or refrain from doing anything; which does not grant or withhold any authority, privilege or license; * * * which does not determine any right or obligation" and therefore one not judicially reviewable under the Urgent Deficiencies Act. (October 22, 1913, Ch. 32, 32 Stats. at L. 208, 219; 28 U. S. C. 45a.)

It is obvious that the order of the Interstate Commerce Commission herein granting certificates and authorizing the proposed construction and abandonments (R. pp. 153, 154) is not an order of the type discussed in *United States v. L. A. & S. L. R. Co., supra,* but rather one which authorizes the Railroads to do acts otherwise prohibited, and therefore is an order properly reviewable under the rule of *B. & O. R. R. Co. v. United States, supra.*

IV.

THE STATE COMMISSION ORDER IS A REASONABLE EXERCISE OF THE POLICE POWER AND DOES NOT DEPRIVE THE RAILROADS OF THEIR PROPERTY WITHOUT DUE PROCESS OF LAW OR DENY THEM THE EQUAL PROTECTION OF THE LAWS OR TAKE THEIR PROPERTY FOR PUBLIC USE WITHOUT JUST COMPENSATION, IN CONTRAVENTION OF THE FOURTEENTH AMENDMENT TO THE CONSTITUTION OF THE UNITED STATES.

The Railroads under Points III and IV of their brief (pp. 72-117) contend that the State Commission order is violative of their rights under the Fourteenth Amendment to the Constitution of the United States inasmuch as it requires them to abandon their present station sites and facilities, extend their main-line tracks and dedicate new properties to public use.

These contentions are not new in union station cases and many state courts have passed upon such questions contrary to the contentions of the Railroads. If the order in a particular case is reasonable, it must be upheld as a proper exercise of the police power of the state.

Before developing the authorities in detail, we will immediately challenge certain statements of fact and claims appearing in appellants' brief, page 72, preceding their argument to the effect that the State Commission order violates their constitutional rights under the Fourteenth Amendment. The following claims warrant comment:

(1) The statement of appellants that their present terminal stations are adequate is not in accordance with the facts. The record shows that they are in fact inadequate. This point will be developed in this brief, *infra*, pages 70-82.

(2) The only portions of their main lines of railroad which appellants would be required to abandon would be a small mileage in connection with track rearrangements in the Los Angeles terminal necessary and incidental in connection with the construction and operation of the union passenger station. The trackage of Southern Pacific on Alameda Street would be retained for industrial freight switching.

(3) The claim of the Railroads that the Commission order requires them "to extend their main lines of railroad to reach territory which they have not heretofore undertaken to serve" is contrary to the facts, as appears from examination of Commission Exhibit 5. (R. p. 226.) The present passenger stations of the carriers are located within the same section of the City of Los Angeles as is the Plaza site of the proposed union passenger terminal and in close proximity thereto.

(4) The Railroads are in error in contending that the State Commission order requires the "joint use by one or more of the Railroads of facilities owned by the others." This contention is answered in detail in this brief, *infra*, pages 93-96.

(5) While the improvements ordered by the Railroad Commission require a total investment in passenger terminal facilities of approximately ten million dollars, the net new money cost of the facilities as ordered will be less than the carriers would immediately expend under their own plan for the improvement of their passenger terminal facilities. The cost of the carriers' plan as compared with the cost of facilities under the State Commission order is developed hereinafter in this brief, pages 89-92.

(6) The appellants are in error in stating that any of their property will be taken or used without compensation first ascertained and paid. This point is answered in detail hereinafter at pages 93-96.

A. In the Exercise of the Police Power Public Authority May Properly Require the Construction and Operation of Union Passenger Stations So Long as the Particular Order is Reasonable.

The decisions of the courts are unanimously to the effect that, when public convenience and necessity would be served thereby, an order requiring two or more railroads to construct and maintain a union passenger depot does not violate any of the carriers' rights under the Fourteenth Amendment to the Federal Constitution.

In *Railroad Commission of Alabama v. Northern Alabama Railway Co.*, 182 Ala. 357, 62 So. 749, the Railroad Commission of Alabama had ordered three railroad companies to construct a union passenger station in Jasper, Alabama, upon a site selected by the Commission. The railroad companies were ordered to acquire said site by purchase or condemnation. Complainant alleged that it had its own depot and had already arranged to construct a new and larger depot upon its own site. It averred that the Commission's order was unreasonable and arbitrary and deprived complainant of its property without due process of law in violation of the Constitutions of Alabama and the United States. The Court held, however, that the Railroad Commission's order, made in the exercise of the state's police power, did not violate any provisions of the State or Federal Constitutions, "notwithstanding the railroad may lose the use of the old building or the use of the lot as a location for its passenger depot." On this point the Court said:

"It acquired the lot and erected the building with a full knowledge of and subject to the police power of the state." (p. 752 of the Reporter.)

In *Railroad Commission of Alabama v. Alabama Great Southern R. Co.*, 185 Ala. 354, 64 So. 13, the Railroad Commission of Alabama ordered five railroads to secure sufficient grounds within a specified territory in the City of Bessemer for a union passenger station and to erect such a station thereon. The railroads having failed to submit plans for the site of the passenger depot or to agree on the apportionment of the expense, the Commission issued a supplemental order fixing the location of the depot, apportioning the cost thereof and directing the railroads to acquire the site by purchase or condemnation. The Railroad Commission's orders were held valid, and on page 16 of the Reporter, the Court said:

"Unless the contrary is clearly shown, we will presume not only that the place prescribed is suitable, but that sufficient ground can be obtained, either by private purchase or by condemnation proceedings, at reasonable figures, for such station. Through the power of eminent domain which the law has conferred upon the railroad companies, they possess all the power which is necessary to acquire the needed lands at their fair value, and, under the present state of the record, we must presume that the Railroad Commission has placed no unreasonable burden upon the railroad companies in so far as the acquisition of the needed ground for the station is concerned."

At page 18 of the Reporter, the Court continued:

"It would, however, create a strange anomaly for the courts to hold that a state has the authority to

require all railroad companies operating railroads within a city, whenever the reasonable needs of the traveling public are such as to demand a union passenger station at that point, to use a union passenger station in said city, and at the same time deny to the state the power to require such companies to jointly acquire, by purchase or by condemnation proceedings, sufficient land upon which to maintain the building and to jointly construct the necessary building. The two positions are inconsistent and cannot co-exist. *If the state has the power to which we have referred, and that power seems to be conceded, then it has the corresponding authority to put that power into exercise.*"

The Railroads criticise this decision (Brief of Appellants, p. 83) by contending that "the power of the state to compel all railroads entering a given city to use a union station was conceded." Examination of the opinion of the Court, however, shows that the following decisions were made in overruling the contentions of the railroads: (1) That the state in the exercise of the police power may require several railroad companies to acquire, either by purchase or by condemnation proceedings, new land for a union passenger station (64 So. 13, 15-16); (2) that an order for the construction and operation of a union passenger station is not void because it directs the railroads to abandon their present occupied and used separate depots and depot facilities (64 So. 13, 16); and (3) that the several railroads may be jointly directed to purchase or condemn the new land for the union passenger station. (64 So. 13, 18.)

In *Mayor and Aldermen of Worcester et al. v. Norwich and Worcester Railroad Company et al.*, 109 Mass. 103, a

statute of Massachusetts provided that five railroad companies should unite in a union passenger station in Worcester; that commissioners should select the site as between two sites named in the statute; that one of the railroads should erect the station with power to condemn, the other railroads paying rent; that after the completion of the station two specified railroads should "respectively discontinue the present locations of their railroads in portions of the City of Worcester;" that all the railroad companies might and should unite in the location and construction of one or more railroad tracks for their joint use, and that the railroads might each purchase or take such lands as might be necessary for their purposes.

The objecting railroads urged, among other matters, that to extend their railroads to the union station "would require the taking of much land from private persons for the location of the extensions through densely settled portions of a populous city;" that the construction of the tracks would involve great expenditures; that one track extension would have a length of over one mile; that some of the railroads would be required to discontinue without compensation valuable portions of their present locations; and that public convenience and necessity would not be served by the changes ordered by the statute.

The Supreme Judicial Court of Massachusetts held that the statute was a reasonable exercise of the right to alter, amend or repeal corporate charters, reserved to the legislature and (at p. 113) said:

> "It is no valid objection to such amendments that they require corporations to extend their tracks, and to exercise the right of eminent domain for this purpose and to incur additional expense. The power to extend their tracks is often granted at their own

request, and is granted with no less propriety when the interests of the public require it."

In *Dewey v. Atlantic Coast Line et al.*, 142 N. C. 392, 55 S. E. 292, a number of citizens of Goldsboro, N. C., brought an action against three railroad companies to prevent obedience by them of an order of the Corporation Commission of North Carolina requiring the railroad companies to construct a union passenger depot in a specified site somewhat removed from the site of the existing depot. In upholding the statute under which the Corporation Commission acted and also the Commission's order, the Court (at p. 294 of the Reporter) said that the power of the legislature to enact such statutes has been established by numerous well-considered cases. The Court also drew attention to the fact that the railroads might use the power of eminent domain to acquire such new properties as might be necessary to enable them to carry out the Commission's order. (p. 295.)

The Railroads criticise this decision (Brief of Appellants, pp. 83-84) by drawing attention to the fact that the action arose at the suit of third parties, namely, property owners, to enjoin the railroad companies from carrying out the Commission's order. The decision shows, however, that the petitioning third parties raised the question of the authority of the legislature to enact a statute conferring union passenger station powers on the Corporation Commission, and we submit that the decision on that issue is as authoritative and significant as would have been the case had the action been instituted by the railroad companies. The Court held: (1) that the power of the legislature to enact such statute has been established by numerous well-considered cases (55 S. E. 292,

294); and (2) that the power of the state to act is not limited to a case in which the railroads already own the site and the right of way leading thereto. If additional property is necessary, it can be acquired by the railroads under the power of eminent domain. (55 S. E. 292-295.)

The decision in the *Dewey Case* was reaffirmed in *Griffin v. Southern Railway Co.*, 150 N. C. 312, 64 S. E. 16, and in *Corporation Commission v. Seaboard Air Line Railway Company*, 161 N. C. 270, 76 S. E. 554.

In *Missouri, O. & G. Railway Co. v. State*, 29 Okl. 640, 119 Pac. 117, it appeared that the Corporation Commission of Oklahoma had made an order directing the Missouri, O. & G. Railway Company and two other railroad companies to erect and maintain a union passenger depot in Durant, Oklahoma, at a designated site. Appellant urged that the Commission's order would compel it to abandon a right of way and station grounds theretofore acquired by it; that it would lose a bonus of $10,000 which citizens of Durant had subscribed for the erection of a passenger station on said station grounds; that the Commission's order would require appellant to acquire a new right of way through private property; that it would necessitate an expenditure by appellant of not less than $50,000; and that the order violated appellant's rights under the Constitution of the United States. In ruling against these contentions, the Court, at page 121 of the Reporter, held that the Commission's order might be sustained either under the reserved power to amend, alter or repeal the charters of corporations, "or on the ground, as stated by Judge Brewer in *State v. Kansas City, etc. Ry. Co.*, 32 Fed. 722, that the same is a valid exercise of the police power of the state."

The Railroads criticize this case (Brief of Appellants, p. 87) on the ground that "that case was decided upon the authority of the *Massachusetts Case* of *Mayor v. Norwich, etc., supra;* which, as we have shown, is contrary to the decisions of the Supreme Court of California and of this Court." There are two obvious answers to this contention: (1) The Railroads have not shown that the Massachusetts decision is contrary to the decisions either of the Supreme Court of California or of this Court. In fact this Court expressly cited the *Massachusetts Case* in *Wisconsin, M. & P. R. v. Jacobson,* 179 U. S. 287, 302; (2) The decision in the *Oklahoma Case* was rested not only upon the *Massachusetts Case* but also expressly "on the ground, as stated by Judge Brewer in *State v. Kansas City, etc. Ry. Co.,* 32 Fed. 722, that the same is a valid exercise of the police power of the state."

In *State v. St. Louis Southwestern Railway Co. et al.* (Tex. Civ. App.), 165 S. W. 491, the State of Texas asked that a writ of mandamus issue to enforce an order of the Railroad Commission of Texas directing two railroad companies to erect and maintain a union station at Hillsboro, Texas. Judgment for the defendants was reversed and the case remanded for a new trial on issues of fact. At page 498 of the Reporter, the Court said:

> "We have no doubt as to the constitutionality of the law requiring railroads to build union depots at such places and of such character as the Railroad Commission shall find necessary for the accommodation of the public, when it shall also have found the other facts required by the statute, but, *if any doubt existed on the subject, it would be our duty to resolve it in favor of the statute.*"

Replying to the argument that the statute did not authorize the Railroad Commission to select the *site* of the proposed union depot, the Court said (p. 498):

> "The statute explicitly grants the Commission the power to require railroads to build union depots, and that carries with it, by necessary implication, every power necessary to the accomplishment of such object. *Courts ought not to resort to technicalities to override the clear import of a statute.*"

Answering the argument that the order of the Railroad Commission was void because it directed the construction of a union depot on a site owned by one of the railroads which refused to let in the others, the Court said (p. 498):

> "But this is immaterial, as said appellees have the right to acquire, by condemnation proceedings, such interest in said land as is necessary for their depot purposes under the order of the Commission."

The Railroads (Brief of Appellants, p. 84) refer to this decision lightly by saying "the question of the power of the state to compel a railroad to extend its lines in order to enter a union station does not appear to have been raised." This contention of the Railroads is obviously in error, as appears from the above quoted language from the decision.

In *Gulf, Colorado & Santa Fe Railway Company et al. v. State* (Tex. Civ. App.), 167 S. W. 192, the State of Texas brought an action against two railroad companies to compel obedience to an order of the Railroad Commission directing them to construct and maintain a union passenger station at Celeste, Texas. Judgment for the state was affirmed. At page 195 of the Reporter the Court said:

"It is urged by demurrer that the order was too vague and indefinite to be complied with, in that it did not designate the location of such depot, and failed to state the kind and character of building or structure required. We think it unquestionably true that the Commission under this statute had the right to determine for itself the location, as well as the character and kind of depot that should be erected; but *it was permissible, we think, for it to leave these matters of detail open to appellants,* for the reason that these questions might be best determined by them."

In the case cited the first points urged by the carriers were that the order of the Railroad Commission deprived them of their property without due process of law and denied to them the equal protection of the laws. Both points were overruled. (pp. 194-5.)

In *State v. St. Louis Southwestern Railway Co. et al.* (Tex. Civ. App.), 199 S. W. 829, the same general issues were involved as in 165 S. W. 491, *supra*. After the Railroad Commission of Texas made its order dividing the cost of the construction of a union passenger depot at Hillsboro between the railroad companies affected, the railroad companies refused to obey the order. Judgment for the railroad companies was now reversed by the Court of Civil Appeals, which itself entered judgment in favor of the state. The conclusions of law set forth in 165 S. W. 491 were reaffirmed. (p. 830.)

In *North Carolina Corp. Comm. v. Southern Railway Co.*, 185 N. C. 435, 117 S. E. 563, the Supreme Court of the State of North Carolina sustained an order of the Corporation Commission of that state requiring two railroad companies to erect, at a junction point, a union station ade-

quate to care for the traffic at that point. The Court said that the statute of North Carolina conferring the power in question upon the Commission is "a valid exercise of the legislative power, and being remedial will be liberally construed." Citing *Dewey v. Railroad, supra,* and *Griffin v. Railroad, supra.*

In *St. Louis S. W. Ry. Co. v. State,* 255 S. W. 390, the Commission of Appeals of Texas sustained an order of the Railroad Commission of that state requiring three railroads to construct a union station upon a particular site.

In *Chicago R. I. P. Ry. Co. v. State,* 90 Okl. 173, 217 Pac. 147, the Supreme Court of Oklahoma discussed the general question at length, and declared:

> "Prior to the passage of the Transportation Act of 1920, the power of the state, through its agency, the Corporation Commission, to require railroads to construct and maintain adequate depots, or, if necessary Union Depots, *was settled and established by a long line of decisions of this court,* both upon the theory (that) the same was a proper exercise of its police power, or of the right reserved to the Legislature to amend, alter, or repeal the charter of said railroad. See section 26, art. 9 of the Constitution of Oklahoma; sections 3459 and 3460, Comp. Laws 1921; *M. K. & T. Ry. Co. v. State,* 24 Okl. 331, 103 Pac. 613; *St. L. & S. F. R. Co. v. Sutton et al.,* 29 Okl. 553, 119 Pac. 423; *M. O. & G. Ry. Co. v. State,* 29 Okl. 640, 119 Pac. 117; *K. C. S. Ry. Co. v. Redwine,* 43 Okl. 610, 143 Pac. 847; *M. O. & G. Ry. Co. v. State,* 53 Okl. 341, 156 Pac. 1155; *Tulsa Street Railway Co. v. Okl. Union Railway Co.,* 76 Okl. 102, 184 Pac. 71. For other cases upon this point see *R. R. Commission of Alabama v. Alabama Great*

Southern Ry. Co., 185 Ala. 354, 64 South. 13, L. R. A. 1915D, 98; *State v. St. Louis S. W. Ry. Co.* (Tex. Civ. App.) 165 S. W. 491; *Dewey v. Atlantic Coast Line Ry.*, 142 N. C. 392, 55 S. E. 292; *St. Louis, I. M. & S. Ry. Co. v. Bellamy*, 113 Ark. 384, 169 S. W. 322, L. R. A. 1915D, 91. The case of R. R. Commission of Alabama v. Alabama Great Southern Ry. Co., supra, discussed the question of acquiring additional land and the fact the police power of the state extends to Union Passenger Depots."

The principal contentions of the Railroads in support of their argument that the order of the State Commission deprives them of rights guaranteed under the Fourteenth Amendment to the Federal Constitution may be summarized as follows: (1) the Railroads may not lawfully be required to abandon any of their existing passenger facilities; (2) the Railroads may not lawfully be required to acquire additional land by the exercise of the power of eminent domain; (3) the Railroads cannot lawfully be compelled to grant the use of any portion of their property to a rival railroad even though compensation be first paid; (4) no public authority can lawfully compel the Railroads to go to a new site within the same city and there erect a union passenger depot.

In connection with these detailed contentions made by the carriers under the score of deprivation of property without due process, we may classify the authorities as follows:

(1) Abandonment of Existing Passenger Stations and Other Facilities.

The following decisions hold that an order for the construction of a union passenger station, otherwise valid,

does not lose its validity because it contemplates the abandonment by one or more railroads of their existing passenger stations and other passenger facilities. Practically every order for the construction of a union passenger station involves the abandonment of one or more existing passenger stations adequate for that railroad alone.

Railroad Commission of Alabama v. Northern Alabama Ry. Co., 182 Ala. 357, 62 So. 749;

Railroad Commission of Alabama v. Alabama Great Southern Ry. Co., 185 Ala. 354, 362, 64 So. 13, 16;

State v. Jacksonville Terminal Co., 71 Fla. 295, 331, 71 So. 474, 484;

Mayor and Aldermen of Worcester v. Norwich and Worcester Ry. Co., 109 Mass. 103;

Missouri, O & G. Ry. Co. v. State, 29 Okl. 640, 119 Pac. 117;

Chicago, R. I. & Pac. Ry. Co. v. State, 90 Okl. 173, 217 Pac. 147;

State v. St. Louis Southwestern Ry. Co. (Tex. Civ. App.), 165 S. W. 491, 199 S. W. 829, 830.

(2) Acquisition of Additional Land By Eminent Domain.

The following decisions hold that the fact that compliance with an order for the construction of a union passenger station will require a railroad to acquire additional property by the exercise of the power of *eminent domain* does not militate against the validity of the order.

Railroad Commission of Alabama v. Northern Alabama Ry. Co., 182 Ala. 357, 62 So. 749;

Railroad Commission of Alabama v. Alabama Great Southern Ry. Co., 185 Ala. 354, 361, 64 So. 13, 15, 16;

Mayor and Aldermen of Worcester v. Norwich and Worcester Railroad Co., 109 Mass. 103;

Dewey v. Atlantic Coast Line, 142 N. C. 392, 53 S. W. 292;

State v. St. Louis Southwestern Ry. Co. (Tex. Civ. App.), 165 S. W. 491, 498, 199 S. W. 829, 830.

On this point, see also the following two cases, which are not union station cases:

Wisconsin, Minnesota and Pacific Railroad v. Jacobson, 179 U. S. 287, 302, 45 L. ed. 194, 201;

Denver & Rio Grande Railroad Co. v. City and County of Denver, 250 U. S. 241, 63 L. ed. 958.

(3) Use of Property of Rival Railroad.

The fact that compliance with an order for the construction of a union passenger station will require a railroad to acquire the right to use the property of a rival railroad will not make such order invalid. The public authorities may, under their police power, make such orders.

Railroad Commission of California v. Southern Pacific Company, 264 U. S. 331;

Mayor & Aldermen of Worcester v. Norwich & Worcester Rr. Co., 109 Mass. 103;

Missouri, O. & G. Ry. Co. v. State, 29 Okl. 640, 119 Pac. 117;

Chicago, R. I. & P. Ry. Co. v. State, 90 Okl. 173, 217 Pac. 147;

State v. St. Louis S. W. Ry. Co. (Tex. Civ. App.), 165 S. W. 491, 498, 199 S. W. 829, 830.

(4) Selection of New Site.

The fact that the public authority selects for the union passenger station a *new site* on lands of third parties does not make the order invalid. Public authority has just as much power to select as a site the lands of third parties as lands already in railroad ownership.

Railroad Commission of Alabama v. Northern Alabama Railway Co., 182 Ala. 357, 62 So. 749;
Railroad Commission of Alabama v. Alabama Great Southern R. Co., 185 Ala. 354, 64 So. 13;
Dewey v. Atlantic Coast Line R. Co.; 142 N. C. 392, 55 S. E. 292.

(Here the site is already largely in railroad ownership.)

(5) Additional Authorities.

In the following additional cases, the right of the public authorities to order the construction and operation of union passenger stations, where the facts showed such order to be reasonable, has been upheld.

State ex rel. Barton County v. Kansas City, Ft. S. & G. R. Co., 32 Fed. 722;
State ex rel. Railroad Commissioners v. Atlantic Coast Line R. Co., 67 Fla. 441, 63 So. 729;
Griffin v. Southern Ry. Co., 150 N. C. 312, 64 S. E. 16;
Corporation Commission v. Seaboard Air Line Ry. Co., 161 N. C. 270, 76 S. E. 555;
North Carolina Corporation Commission v. Southern Ry. Co., 185 N. C. 435, 117 S. E. 563;
Missouri, K. & T. Ry. Co. v. State, 38 Okl. 401, 133 Pac. 35;
Chicago, R. I. & P. Ry. Co. v. State, 90 Okl. 173, 217 Pac. 147.

B. Authorities Relied Upon By the State Court in the Decision Under Review Are Sound.

In the light of the numerous foregoing authorities the California Supreme Court correctly stated the law in its decision when it held:

> "It is also contended that the order, requiring, as it does, the acquisition and dedication to public use of new property necessary for the construction of a union station and the abandonment of adequate facilities, deprives the petitioners of their property without due process of law and takes their property for public use without compensation, contrary to the constitutional guarantees of the United States and of the state of California. That contention is not a new one, but has been passed upon by numerous state tribunals, contrary to the contention of the railroads herein, noticeably in the cases of *State ex rel. Railroad Commissioners v. Atlantic Coast Line R. Co. et al.*, 67 Fla. 441; *Griffin v. Southern Ry. Co.*, 150 N. C. 312; *State ex rel. Corporation Commission v. Seaboard Air Line et al.*, 161 N. C. 270; *State ex rel. Corporation Comm. v. Southern Ry. Co. et al.*, 185 N. C. 435; *Gulf, S. F. Ry. Co. v. State*, 167 S. W. 192; *Railroad Commission v. Northern Alabama Ry. Co.*, 182 Ala. 357; *Railroad Commission v. Alabama Great Southern R. R. Co.*, 185 Ala. 354; *Mayor, etc. v. N. & W. R. R. Co.*, 109 Mass. 130; *State v. St. L. S. Ry. Co.*, 165 S. W. 491; *W. M. & P. Co. v. Jacobson*, 179 U. S. 287.
>
> "The foregoing decisions also answer the contention of petitioners that the erection of a union station is a matter of business policy and management and not a proper subject for control under the police power of the state." (R. p. 195.)

The authorities relied upon in the above quotation have been cited and referred to with approval in connec-

tion with the same contentions under the Fourteenth Amendment by the following federal tribunals:

United States Supreme Court:

Second Los Angeles Case, supra (pp. 67-8), (Appendix to this Brief, p. 118);

Court of Appeals of the District of Columbia:

United States of America ex rel. City of Los Angeles v. Interstate Commerce Commission, 34 Fed. (2d) 228, 232;

Interstate Commerce Commission:

First Federal Commission Decision, supra (pp. 425-6), (Appendix to this Brief, p. 37).

C. The Authorities On Which the Railroads Rely Are Not in Point.

The Railroads (Brief for Appellants, pp. 73-82, 90-93), in support of their contention that the California Railroad Commission's order deprives them of rights under the Fourteenth Amendment to the Federal Constitution, cite and quote excerpts from numerous decisions including:

Northern Pacific v. North Dakota, 236 U. S. 585;

Oregon R. N. Co. v. Fairchild, 224 U. S. 510;

McNeill v. Southern Railway Co., 202 U. S. 543;

Pennsylvania Coal Co. v. Mahon, 260 U. S. 393;

Southern Bell Telephone Co. v. Town of Calhoun, 287 Fed. 381;

Oregon, Washington R. & N. Co. v. U. S. (D. C. of U. S. for District of Oregon, January 29, 1931);

Pacific Tel. & Tel. Co. v. Eshleman, 166 Cal. 640;

Atchison, Topeka & Santa Fe Railway Co. v. Railroad Commission, 173 Cal. 577;

and

Hollywood Chamber of Commerce v. Railroad Commission, 192 Cal. 307.

These cases cited and relied upon by appellants are not in any sense applicable in the instant case. They are all cases wherein the state statute or order under attack has been found to be unreasonable or unsupported by the evidence, or the attempted regulation has been outside the field of dedication to public use and, therefore, beyond proper bounds.

In the instant case the order of the State Commission is applicable to an existing public service being rendered by the Railroads and is reasonable and supported by the evidence. The Railroads admittedly have dedicated their properties to public use and have undertaken to provide transportation service to the City of Los Angeles and surrounding territory. If the passenger terminal facilities of said carriers in Los Angeles are inadequate, as the State Commission in effect has found, and if the public convenience and necessity require that they be made adequate through the construction and operation of a union passenger station, certainly the State Commission, in the exercise of the police power of the state, may properly require the construction and operation of such station. We will presently develop the facts of record to show that the order of the State Commission is reasonable and supported by the evidence, as found by the State Supreme Court.

Particular reference should be made to the three California Supreme Court decisions relied upon by appellants (i. e., the three cases last above cited):

In *Pacific Telephone & Telegraph Co. v. Eshleman*, 166 Cal. 640, the Supreme Court of California annulled an order of the State Commission directing the Pacific Telephone & Telegraph Company to construct a physical connection

between its lines and those of two independent telephone companies and to transmit telephone messages over its said lines. The Court held that the Pacific Company had never dedicated its property to such use by rival telephone companies and that for this reason the State Commission's order went beyond the police power and constituted a taking of property for which compensation must first be made. No such questions arise here. The Carriers have dedicated their property to an adequate passenger service in the City of Los Angeles and hence are subject to regulation of that service in the public interest under the police power.

In *Atchison, Topeka and Santa Fe Ry. Co. v. Railroad Commission,* 173 Cal. 577, this Court annulled an order of the Railroad Commission of California directing the Santa Fe to construct and operate a line of railroad between Oceanside in San Diego County and Temecula in Riverside County, California. The order could have been complied with either by constructing twelve miles of new railroad between Fallbrook and Temecula or by an alternative line of thirty-three miles of new construction between San Luis Rey and Temecula. The California Supreme Court held that the California Commission's order, contemplating the construction of a *new line of railroad* a number of miles in length *into territory not theretofore served by the railroad,* would require the dedication of the railroad's property to a new service (p. 582), and hence annulled the order. While conceding that a *railroad company "may be compelled to furnish proper stations for the reception and discharge of passengers and freight"* (p. 585), this Court held that what was required by the California Commission's order was that the Santa

Fe *"build a new line of road to tap or supply a territory which has not theretofore had the benefit of direct railroad service."* (p. 586.)

In *Hollywood Chamber of Commerce v. Railroad Commission,* 192 Cal. 307, the other California Supreme Court decision cited by the Carriers, the petitioner sought by writ of mandate to compel the Railroad Commission of California to hear and determine a complaint in which the California Commission was asked to direct the Los Angeles Railway Corporation to construct *ten and one-half miles* of double track railroad into Hollywood—*a territory which the railway corporation had never undertaken to serve.* Under well established principles, this Court denied the writ.

The facts of the above three cases are, of course, entirely different from the present situation, in which it appears that for many years the Carriers have held themselves out as serving the City of Los Angeles with adequate passenger service and where what is requested is *merely a relocation within the same general section of the same city passenger depot facilities, for the purpose of rendering more adequately and satisfactorily the very service which the Carriers have for many years undertaken to give to the public.*

The Railroads also rely on a separate concurring opinion of Chief Justice Shaw in the *First State Court Case, supra* (p. 228) in which he stated that in his opinion it is beyond the power of the Interstate Commerce Commission, as well as the Railroad Commission, to direct the construction of a union passenger station in Los Angeles, for the reason that it would be necessary for the Carriers to acquire new land for such station and to

build tracks thereto. In other words, Chief Justice Shaw held that on such facts all public authorities are helpless. This is an extreme view, which, we respectfully submit, was not the law when the Chief Justice wrote his concurring opinion, never has been the law and is not the law now. We invite attention to the following matters in connection with Chief Justice Shaw's separate opinion: (1) None of the other six Justices concurred in the views so expressed; (2) The language used does not have the force of decision (*Del Mar W. L. & P. Co. v. Eshleman*, 167 Cal. 666); (3) No other decision of the Supreme Court of California or any other Court, as far as we have been able to ascertain, supports the language of Chief Justice Shaw; and (4) Other union depot cases decided in the various states of the union are all at variance with the individual and personal views thus expressed.

It is significant to point out that in the proceedings before the California Supreme Court, from which the present appeal has been taken, the Railroads pressed the foregoing California decisions upon the Court, but the Court found that they were clearly inapplicable to the facts in the present case and affirmed the order of the State Commission.

The numerous authorities cited by the Railroads to the effect that they may not be required to extend their lines to serve new territory which they have not thertofore undertaken to serve, are obviously not applicable to the facts in the instant case. In this regard let us briefly refer to the record.

California Railroad Commission Exhibit 5 (R. p. 226), a map of the railroad and industrial district of Los Angeles, and the Plaza plan for a union passenger terminal

as ordered by the State Commission (Exhibit 4-b, R. p. 266), show the site of the proposed union station in relation to the existing tracks and passenger depots of the Carriers. As appears from Commission Exhibit 5, the Southern Pacific's main line from the north, the Santa Fe's main line from the north and the Salt Lake's branch line to Pasadena all pass under a single bridge or viaduct, over the Los Angeles River, known as the North Broadway viaduct, at the entrance of the city from the north. The two former lines are located under said viaduct along the west bank of the river and the latter line along the east bank. The point at which said tracks of said carriers run under the North Broadway viaduct is located only approximately three-quarters of a mile distant northerly from the site of the proposed union passenger terminal. Commission Exhibit 5 also shows that the Santa Fe's main-line tracks run directly across the site of the proposed union passenger terminal near the west bank of the river, the Southern Pacific's main-line tracks run across the site along Alameda Street and the Salt Lake's branch-line track lies along the east bank of the river, directly across the river from the site. The said exhibit also shows that the present passenger stations of the three railroads are located within the same section or portion of the industrial district of the city as the site of the proposed union passenger terminal, the Southern Pacific passenger depot being within approximately one mile of the proposed site, the Santa Fe depot and the Salt Lake former depot (now burned) being within approximately one-half mile of the proposed site.

We thus find that what the State Commission's order requires is merely a regulation in the public interest

under the police power of the passenger service which these railroads have for many years been performing by means of their tracks, trains and depots in this identical railroad and industrial district of the City of Los Angeles.

D. The Order of the Railroad Commission of California is a Reasonable Exercise of the Police Power.

Although the Railroads have devoted forty-four pages of their brief (Brief for Appellants, pp. 72-116) to argument that the order of the State Commission deprives them of property rights under the Fourteenth Amendment to the Federal Constitution, they have not challenged any of the ten specific findings of the State Commission (R. pp. 131-133) upon which the Commission's order is predicated. Indeed, the evidence before the Commission is not referred to except at pages 110 and 111 of their brief. We do not understand that the Railroads even suggest that the findings of the State Commission are not fully supported by the evidence, and we therefore find no necessity or occasion to point out in detail the testimony sustaining the said findings. However, in order that there may be no question in this regard and in order that the reasonableness of the Commission order may be apparent to this Court, we will briefly advert to salient portions of the record.

The California Supreme Court after reviewing the record made before the Railroad Commission held that "the findings of the Railroad Commission were made after full consideration and upon ample evidence," and that "there is nothing unreasonable or arbitrary in the findings and order made." (R. pp. 196, 197.) Upon the question of the reasonableness of the said Commission order the State Court held:

"The Southern Pacific Company, one of the petitioners here, contends that with relation to it the order is void because its necessary force and effect, as to said petitioner, is to require it to abandon adequate facilities and to join the other petitioners in acquiring new property which is unnecessary for a full performance of said petitioner's duties to the public. This argument is made because there has been no finding of fact made by the Railroad Commission of this state that the passenger station and facilities of the Southern Pacific Company was inadequate. There is, assuredly, an implied finding to this effect in the order of the Railroad Commission under review. The argument of the Southern Pacific Company that the evidence does not show that its passenger depot is inadequate, but, on the contrary, shows it to be adequate for some years to come, loses sight of the fact that an adequate building alone will not constitute adequate passenger terminal facilities, but that a satisfactory passenger terminal contemplates also that passenger trains may safely be directed to said terminal. The record discloses that passenger trains of the Southern Pacific Company can only reach its present passenger terminal by grade crossings along Alameda Street, which are so unsafe, impracticable and unreasonable, under all the surrounding circumstances, as to require elimination. The carriers admit the desirability of eliminating the grade crossings, and submitted a plan of their own. Both Commissions have found this plan undesirable and the application of the carrier to proceed in accordance therewith was denied by the Interstate Commerce Commission. Petitioners assert that they do not object to the elimination of grade crossings, but object to the method employed for accomplishing this. Extensive hearings were had upon this general problem and expensive investigations were made by en-

gineers and other experts and the findings of the Railroad Commission were made after full consideration and upon ample evidence.

"Unless the action of the State Commission is beyond its jurisdiction, its findings are binding upon us in this proceeding. (*Pac. Tel. & Tel. Co. v. Eshleman,* 166 Cal. 640.)

"It is contended by the petitioners, Atchison, Topeka and Santa Fe Railway Co. and Los Angeles and Salt Lake Railroad Co., that their property is being taken for public use without compensation and without due process of law because the necessary effect of the order under review is to require them to join in the construction of a union station; the primary purpose of which is to accomplish the removal of the tracks of the Southern Pacific Company from Alameda street, a matter with which they are unconcerned.

"The Railroad Commission, on the other hand, takes a position which we think is correct, to the effect that each company is ordered to join in the erection of the union station because of its own inadequacies in terminal passenger facilities; that the proportionate expense of each has not yet been determined, and that when it is determined, it is assumed that each carrier will be required to pay because of and in an amount proportionate to the evils in its system sought to be remedied by the new plan. It cannot be assumed that in the event they fail to agree upon a segregation of the costs, the Railroad Commission will require any of the carriers to pay more than the amount necessary to furnish proper facilities to perform its duty to the public.

"It is also contended, and we think with little merit, that the order of the Railroad Commission

is arbitrary because not warranted by the evidence introduced at the hearings. The evidence, indeed, the admitted facts, show that the station facilities of two of the carriers are inadequate, and that the grade crossings of the Southern Pacific, the third carrier, are dangerous to life and limb and unsuited to the surroundings. The latter matter could only be changed by a complete and expensive change of trackage or a change of terminal and the Commission adopted the latter method because of the need of a new terminal by the other two carriers. There is nothing unreasonable or arbitrary in the findings and order made." (R. pp. 195-197.)

An examination of the record discloses that the State Court was clearly warranted in holding the findings and order of the State Commission to be supported by ample evidence and reasonable in every particular.

(1) The Southern Pacific Passenger Terminal Facilities Are Inadequate.

In this regard, Richard Sachse, Chief Engineer of the California Railroad Commission testified:

"The question of whether there ought to be a union passenger terminal in Los Angeles regardless of location should be answered with a very decided 'yes.' We come to that conclusion for the reason that in Los Angeles the physical conditions are practically ideal and the railroad situation at this time is such that if ever a union depot is to be built, this is probably the time to build it. This is so because the existing facilities are inadequate, and a great deal of money has to be expended in the near future regardless of whether there is a union depot or not and regardless of where it is going to be built." (R. p. 221.)

"The recommendation that Commission's engineering department made was that all passenger railroad traffic and through freight traffic should be eliminated from Alameda Street so that there would be left only certain switching service which should be conducted at night. No feasible plan for meeting the Alameda Street situation has ever been presented which did not involve the construction of a union passenger station." (R. p. 259.)

"In Los Angeles the situation is ideal for the creation of a union station. The specific facts that apply to Los Angeles I have summarized, although they are stated in greater detail in Railroad Commission Exhibit No. 1. My summary is this: First, all of the three railroads are under the necessity, either immediately or in the near future, of making extensive improvements in passenger facilities. The Santa Fe is on record as admitting the immediate necessity of building new and adequate passenger station facilities. It is certain that these will cost in excess of $1,000,000. The utterly inadequate and inefficient and badly located passenger station of the Union Pacific was recently damaged by fire and has not been repaired or rebuilt, and this important railroad now uses, under a temporary permit, the Southern Pacific Arcade passenger station. An inspection of the latter station any day of the year in peak traffic hours will establish the fact that it either has actually reached its capacity or that the capacity will be reached in a very short time, and especially, as far as the convenience to the public is concerned; and if that is to be made, that, of course, means expenditure by both lines." (R. p. 260.)

"I testified before the Interstate Commerce Commission and also before this Commission and my opinion has not been changed that the Arcade site

is inadequate, certainly for a union station, and also for a joint station as is proposed by the two carriers, being too narrow for the necessary number of station tracks and insufficient room for adequate mail, express and baggage facilities as they will have to be provided for in the near future. Considering the possibilities for expansion present on that site, it is found that it will be a very expensive and very inconvenient proposition to expand the site and not in the interests of the city. It can be done by relocating Alameda Street or by building over or under the street or by doing the same thing on the Central Avenue side. Expansion north and south can be made by closing Fourth Street, or separating grades or elevating station tracks, all of which are undesirable and attended by expense that is not reflected in the estimates at present before the Commission." (R. pp. 261, 262.)

"The present Southern Pacific passenger station and incidental facilities are adequate for the Southern Pacific alone for the present time and for perhaps 20 years in the future. Irrespective of any grade crossing situation, considering the adequacy of the Southern Pacific station for its own use and the necessity of the Salt Lake and Santa Fe of providing themselves with station buildings, a union station at the Plaza would be recommended." (March 5, 1926.) (R. p. 265.)

A. G. Mott, Chief Engineer of the California Railroad Commission, testified:

"Based upon these studies I am of the opinion that for peak periods there is now no substantial margin of station track capacity at the Arcade Station, and that even with the additional two tracks that is proposed there will not be provided an adequate capacity

to take care of the joint operations of the Southern Pacific and the Salt Lake for a period of more than fifteen years. In making this estimate of fifteen years I am assuming that every possible operating efficiency will be taken advantage of. In my opinion there is no room at present for the Santa Fe in the Arcade Station, under present trackage and with the two additional tracks it would be inadequate right now for peak periods. There is no additional area in this particular site upon which I can see that additional tracks can be provided in any convenient way." (R. pp. 252, 253.)

* * * * * * *

"Frequent observation on my part indicates that there is a very definite tendency toward overcrowding the waiting room at this station between the hours of 7 and 8 p. m., just prior to the departure of such important trains as the Padre, Lark and Sunset Limited, and I am thoroughly convinced that, entirely aside from a theoretical consideration of station waiting room capacities, the present waiting room at the Arcade Station will prove to be entirely inadequate for the combined operations of the Southern Pacific and the Salt Lake for peak periods of travel within ten years. I do not see how the waiting room capacity at the Arcade Station could be increased except at a very large expense and at the sacrifice of necessary space for other incidental station facilities, such as baggage room and mail handling facilities, etc." (R. p. 253.)

The trains of the Southern Pacific now enter and leave the Southern Pacific Arcade Station at grade via Alameda Street, a principal north and south street running through the heart of the industrial district of Los Angeles. (Railroad Commission Exhibit No. 5, R. p. 227.) The uncon-

tradicted evidence demonstrates that the Alameda Street grade crossing situation is intolerable and must be remedied. Richard Sachse, Chief Engineer of the California Commission, testified:

> "All main line traffic should be diverted from Alameda Street, which will result in 97 per cent of all traffic now on Alameda Street being removed." (R. p. 221.)

> "The conclusion as to the Alameda Street situation was that it was intolerable and to the greatest possible extent steam traffic must be eliminated because it did not seem practicable to us to eliminate the tracks entirely. This problem was so very clearly tied up with passenger station situation that as far as Alameda Street is concerned, the two are inseparable. They are inseparable for the reason that the Southern Pacific passenger station is located on Alameda Street, and all passenger trains that are using that station and have used it, are using Alameda Street north of the station for the trains coming in northerly and going out northerly and south of the station coming in and out southerly. * * * The recommendation that Commission's engineering department made was that all passenger railroad traffic and through freight traffic should be eliminated from Alameda Street so that there would be left only certain switching service which should be conducted at night. No feasible plan for meeting the Alameda Street situation has ever been presented which did not involve the construction of a union passenger station." (R. p. 259.)

> "The most important of all reasons why a union station should be constructed at the Plaza is to eliminate the steam main line trains from Alameda Street. The other reasons which make it necessary.

to construct a union station at the Plaza are that the carriers are under the necessity of spending large sums of money for the improvement of passenger facilities aside from the question of Alameda Street, the physical conditions in Los Angeles, the topography, and also the conditions under which the steam railroads operate at present, are practically ideal for the establishment of the union station and a union station would more conveniently and adequately serve the passengers using the steam railroads as well as the general public that have occasion to use these steam railroad passenger depots, and the capital costs and operating costs would be less at a union station that under separate stations and a union station is a general consonance and fits in better with the city development of the civic plan. The property necessary to the erection of a union station is largely but not entirely railroad property. There is a very decided tendency of consolidation of terminals in large cities because the consolidation is recognized as a tremendous factor in railroad operation. These are some but not all of the reasons why I think a union station is desirable for Los Angeles." (R. pp. 264, 265.)

F. L. Burckhalter, First Assistant General Manager of the Southern Pacific Company, testified:

"The grade crossing situation is difficult; it is the most difficult situation of that kind anywhere in the West that I have ever seen or known of. It is a situation that has long been up for correction and the plans of the carriers afford a means of correction of this very bad grade crossing situation within a very short period of time. The public interest will be served in the carriers' plan by an expenditure on the part of the steam carriers for grade separation

of about $4,330,000. This expenditure would accomplish the elimination of 43 steam line railroad grade crossings, over which there are about four thousand train movements per day. From data in the record I conclude that Alameda Street, which is occupied by the Southern Pacific and in part by the Union Pacific for a distance of about four miles is crossed by about 125,000 vehicles per day. From intersecting streets there are about four thousand street cars crossing Alameda Street today. If we assume there are two people on an average in the vehicles and about twenty people on an average on the street cars, we find that some 330,000 people per day cross the steam railroad lines on Alameda Street. The existing steam line operations impose a tremendous interference to that cross traffic and impose a considerable interference to the traffic along Alameda Street. There are also a good many pedestrians crossing the street as well." (R. pp. 299, 300.)

It is, of course, true that an adequate building alone does not constitute adequate passenger facilities. This was pointed out by the California Supreme Court in the decision now under review (*Third State Court Case, supra*) (R. pp. 184-186):

> "a satisfactory passenger terminal contemplates also that passenger trains may safely be directed to said terminal * * *. The record discloses that passenger trains of the Southern Pacific Company can only reach its present passenger terminal by grade crossings along Alameda Street, which are so unsafe, impracticable and unreasonable, under all the circumstances, as to require elimination."

The Southern Pacific claims that there is no evidence in the records to show that its present passenger facilities

are in any respect inadequate and then argues that it is being directed to take action either to eliminate the dangerous grade crossing situation on and along Alameda Street or to help correct the existing passenger inadequacies of the Santa Fe and the Salt Lake. (Brief of Appellants, p. 109.) As we have shown above, this claim and argument are without merit.

In support of its argument the Southern Pacific relies on the statement of the California Railroad Commission that the Arcade depot thereafter to be erected would be ample to provide for the probable passenger traffic of a city several times "the present size" of Los Angeles, and on several statements in Exhibit 1 of the California Railroad Commission. (Brief of Appellants, pp. 109-111.)

In answer to these arguments of the Southern Pacific, it should be noted: (1) the City of Los Angeles has enjoyed phenomenal growth in population. The 1930 census shows a population of 1,238,048. The statement of the State Commission that the Arcade Depot to be erected would be ample to provide for passenger traffic for a city several times the present size of Los Angeles was made in 1913 (3 Opinions R. R. Comm. of Calif., p. 929) when the population of the city was less than 400,000. (California Commission Exhibit 56, R. p. 302.) The statement thus made in 1913 is now of no significance in view of the tremendous growth in population of Los Angeles; (2) the statements taken from Commission Exhibit 1 indicating that the Southern Pacific passenger station is adequate were made in 1919, since which time the population of Los Angeles has more than doubled (R. p. 235); (3) the more recent testimony outlined above shows that the Southern Pacific station building has actually reached its

capacity or that its capacity will be reached in the near future; and (4) the record discloses that passenger trains of the Southern Pacific Company can only reach its present station by grade crossings along Alameda Street, which are so unsafe and unreasonable under all the circumstances as to make the existing station site undesirable.

(2) The Atchison, Topeka & Santa Fe and Los Angeles and Salt Lake Passenger Terminal Facilities Are Inadequate.

Richard Sachse, Chief Engineer of the California Commission, testified:

> "* * * all of the three railroads are under the necessity, either immediately or in the near future, of making extensive improvements in passenger facilities. The Santa Fe is on record as admitting the immediate necessity of building new and adequate passenger station facilities. It is certain that these will cost in excess of $1,000,000. The utterly inadequate and inefficient and badly located passenger station of the Union Pacific was recently damaged by fire and has not been repaired or rebuilt, and this important railroad now uses, under a temporary permit, the Southern Pacific Arcade passenger station." (R. p. 260.).

The Santa Fe passenger depot in Los Angeles is antiquated and wholly inadequate for present and future needs. (California Commission Exhibit 1, pp. 90, 242-3, certified separately, R. pp. 7, 260.)

R. B. Ball, Chief Engineer of the Atchison, Topeka and Santa Fe Railway Company, Coast Lines, testified:

> "I have prepared a map showing the proposed track layout and tentative layout for a station at the Santa Fe site.

"I have made an estimate of the cost of the facilities shown on the map referred to so far as they require changes in existing facilities. The total cost of these facilities would be about $1,182,317. Against that figure there is a credit for salvage of $175,188. The net charge to capital account would be the difference of these two figures." (R. p. 228.)

See also Atchison, Topeka and Santa Fe Railway Company Exhibit No. 3. (Witness Ball; showing in detail the estimated cost of this proposed new station and incidental facilities. (R. pp. 229-230.))

The Salt Lake has no passenger depot of its own in Los Angeles and is using the Southern Pacific's Arcade depot as a temporary matter under permission of the Railroad Commission for the reason that the wooden depot of said company, formerly located east of the Los Angeles River, was damaged by fire. In order to reach the Arcade depot the Salt Lake operates all its passenger trains on and along Alameda Street from Butte Street on the south to the Arcade depot on the north at grade across many important streets. (California Commission Exhibit 5, R. p. 226.) These operations of the Sale Lake have greatly accentuated the inconvenience and danger to traffic, both vehicular and pedestrian, across said portion of Alameda Street. (*Third State Commission Decision, supra.*) (R. p. 128.)

F. H. Knickerbocker, General Manager of the Los Angeles and Salt Lake Railroad, testified:

"The Union Pacific has sufficient holdings on the east bank of the river to construct an adequate passenger terminal without acquiring any more property. The logical place would be at Seventh Street and an expenditure between $750,000.00 and

$1,000,000.00 would provide adequate facilities, which would take care of the Salt Lake for the next 10 or 15 years." (R. p. 279.)

(3) The Public, Convenience and Necessity Require the Establishment of a Union Passenger Terminal in the Plaza Area.

The California Commission on three occasions and the Interstate Commerce Commission on two occasions have found that public convenience and necessity require the establishment of a union passenger station in the Plaza area in Los Angeles.

First State Commission Decision, supra, pp. 776, 777, (R. pp. 75-77);

Second State Commission Decision, supra, pp. 944-946, (R. pp. 91-93);

Third State Commission Decision, supra, pp. 160-162, (R. pp. 131-133);

First Federal Commission Decision, supra, pp. 454-461, (Appendix to this brief, pp. 84-95);

Second Federal Commission Decision, supra, p. 496, (R. p. 145).

The Railroads do not contend that these findings, sustained by the California Supreme Court, lack support in the record. The findings are abundantly supported, and we will refer to the matter but briefly.

In 1917 the State Commission instructed its Chief Engineer, Richard Sachse, to conduct a thorough investigation into the Los Angeles grade crossing and terminal situation. The investigation was completed in 1919. Results of such investigation were embodied in the California Commission's Exhibit No. 1 introduced in evidence (R. p. 221) and transmitted to this Court as an original exhibit. (Praecipe Item 54(a), R. p. 7.) At page

13 of said exhibit appears the conclusion with reference to the establishment of a union passenger terminal:

> "After a most exhaustive consideration of all arguments for and against a union passenger station in Los Angeles, we have come to the conclusion that the establishment of such a station is desirable both from the standpoint of the public and from the standpoint of the railroads, that the cost is justified and that the project can be financed. The reasons for this conclusion are given in detail in the body of the report.
>
> "We have found three sites adapted to the location of such a station, viz., the Plaza site, the Santa Fe Station site and the Southern Pacific Station site. Detailed plans and estimates have been worked up by us for each of these locations, and the recommendations contained in the report have been fitted to each of the plans. Of the three plans, the Plaza plan is the best and it is our recommendation that the Commission order the establishment of a union passenger station at this site substantially in accordance with the plan we have developed."

Further support for the findings that public convenience and necessity require the construction of a union passenger station in the Plaza area is to be found in the testimony of the following witnesses:

Richard Sachse (R. pp. 221-222, 259-260, 262-264);

A. G. Mott (R. pp. 241, 256, 302).

(4) The Plaza Plan.

The Plaza plan for a union passenger station as ordered by the State Commission is shown in Commission Exhibit No. 4-b (R. p. 267) and described in detail by Commission witness G. S. Hill. (R. pp. 226-228, 266-269.)

The plan is a practicable, workable plan. (R. pp. 272-273.) The Plaza site selected for the station and incidental facilities is shown to be adequate to permit of future expansion and to meet the needs of Los Angeles for all reasonable time to come. (R. pp. 261-263, 303.) The site is shown to be more accessible to street car and vehicular traffic than the Southern Pacific Arcade station site. (R. pp. 255, 272.) The Plaza area is the geographical center of the metropolitan area of Los Angeles as well as the center of population of the same district. (R. p. 271.) It is also excellently located in relation to the future development of the rapid transit system of Los Angeles. (R. pp. 256, 303.) The location conforms to, and is in harmony with the civic plans of Los Angeles. (City of Los Angeles Exhibits Nos. 13, 14, 15, 16; R. pp. 270, 271, certified as original exhibits, Praecipe R. p. 8.)

A narrative description of the plan is set forth in an appendix to the *First Federal Commission Decision, supra*, p. 465. (See appendix to this brief, pp. 103-105.)

The Plaza site shown on Commission Exhibit No. 4-b comprises an area of approximately forty acres. This compares with the area of the Southern Pacific present site of sixteen acres. The area of the site now used by the Santa Fe for its passenger station is approximately eleven acres. (R. p. 303.) Approximately two-thirds of the entire lands required under the Plaza plan (Commission Exhibit No. 4-b) are now in the ownership of the Southern Pacific Company. (R. pp. 257, 297.)

(5) The Railroads' Proposal for Improving Their Passenger Terminal Facilities.

The Atchison, Topeka and Santa Fe Railway Company is on record as admitting the immediate necessity of

building a new passenger station and incidental facilities. (R. pp. 228-230, 260.) For this new construction the said carrier proposes to expend a total of $1,182,317 (R. p. 230) and would construct it on the location of its present station on the west bank of the Los Angeles River near First Street. (See California Commission Exhibit No. 5, R. p. 227.)

The Los Angeles and Salt Lake Railroad Company is without a station of its own, its station having been destroyed by fire. It is now using the Southern Pacific Arcade Station under a temporary permit. (R. p. 260.) The Southern Pacific Company and Los Angeles and Salt Lake Railroad Company desire to improve their passenger terminal facilities by making certain permanent improvements in the Arcade Station and its incidental facilities to be jointly used on a permanent basis. This plan is described in the record as the Southern Pacific-Salt Lake Plan, or Carriers' Plan.

Subsequent to the decision of this Court in the *First Los Angeles Case, supra,* the Southern Pacific Company and Los Angeles and Salt Lake Railroad Company filed with the Interstate Commerce Commission their joint application for certificates under Paragraphs 18-20 of Section 1 of the Interstate Commerce Act for authority to effect the construction and abandonments necessary to put into effect their proposed plan (Finance Docket Nos. 3556, 3569; Appendix to this brief, page 29, footnote.) These matters were heard jointly with the proceeding instituted against the Railroads by the City of Los Angeles (No. 14778) and decided jointly in the *First Federal Commission Decision, supra.* The Interstate Commerce Commission, after exhaustively reviewing the re-

spective plans, the Plaza Plan and the Southern Pacific-Salt Lake Plan, denied the applications of the carriers and issued its findings approving the Plaza Plan. (pp. 459-460.) (Appendix to this brief, pp. 92-95.) The Railroads' plan described in detail in Appendix No. 2 to the *First Federal Commission Decision, supra* (p. 466) is as follows:

> *"The Arcade Plan Proposed by Applicants.*
>
> The Arcade station site and depot building have been described in the report. Under applicants' plan all eight of the present station tracks save one would be stubbed at Fourth Street, the northern end of the yard, and four additional station tracks added. The tracks would range in capacity from 10 to 20 cars and would have an average capacity of 16 cars. The remaining track across Fourth street would furnish access to the railway-mail post office, the express yard, a plant of the Los Angeles Ice and Cold Storage Company, and would connect with the Alameda street tracks at Third street. As at present, access to trains would be by means of a subway under the station tracks, with ramps to the umbrella sheds and station building. From the south end of such sheds the station tracks would be gathered into the two-track throat near Sixth street. A spur from the east side of the yard would connect the throat with the Alameda street tracks. In order to secure a separation of grades, the station yard would be graded up on a 1 per cent grade from the present umbrella sheds toward the viaduct at the south end of the yard, and Sixth street and Alameda street would both be depressed five feet.
>
> "From the south end of the station yard the viaduct would extend across Sixth street on a 10° curve and turning eastward would cross Alameda street a short

distance south of its intersection with Sixth street. From thence it would continue east, south of and parallel to Sixth street, to the west bank of the river. The grade on the curved viaduct mentioned would be a compensated grade of 1 per cent. The viaducts would be ballasted deck structures on concrete pillars or columns, with 20-foot spans between streets and clear spans over principal street crossings. From the west bank of the river curved bridges would extend to the Salt Lake right of way across the river, one to the north and one to the south. From the north end of the northerly curved bridge the track would descend to grade. Connections would be provided with the Southern Pacific-El Paso line at Alhambra avenue and with its main line from the north on the east bank of the river north of the Arroyo Seco. The Salt Lake line to Pasadena and Glendale would have access to the station in similar manner. The southerly curved bridge would continue south along the east bank as an elevated structure, pass over Seventh street and reach grade near Ninth street. Connection with Alameda street and the Southern Pacific line from the south would be by means of the Butte street bridge reached by a curved track on the east bank. Salt Lake trains from the east and south would reach the station over the southerly curved bridge also. Under this plan only night switching of freight for industries would remain on Alameda street. The track along Alameda street would be cut near Sixth street and freight from the River station yard for industries on Alameda street south of Sixth street would move east on Alhambra avenue to the east bank of the river and thence to Alameda street by way of the Butte street bridge. The Southern Pacific intends, if the applications are granted, to relocate its coach yards

adjacent to its shop grounds on the east bank of the river south of Alhambra avenue. The Salt Lake will have its coach yards at Hobart."

First Federal Commission Decision, supra (Appendix to this brief pp. 105-107).

The Railroads' plan for joint station facilities for Southern Pacific Company and Los Angeles and Salt Lake Railroad Company at the Arcade site, in substantially the same form as outlined by the Interstate Commission in the *First Federal Commission Decision, supra*, was also presented to the California Railroad Commission for approval, and disapproved, and found not to be in the public interest in each of the three decisions of the State Commission. (*First State Commission Decision, supra* (R. pp. 24-84); *Second State Commission Decision, supra* (R. pp. 84-96); and *Third State Commission Decision, supra* (R. pp. 121-134).)

(6) The Estimated Cost of the Plaza Plan As Ordered By the State Commission is Less Than the Sum Proposed to Be Immediately Expended By Defendant Railroads For Separate Facilities.

Both the State Commission and the Interstate Commerce Commission have found that a union passenger terminal and incidental facilities can be constructed at the Plaza site in substantial compliance with the Plaza plan (Commission Exhibit No. 4-b) at a total cost of approximately $10,000,000 gross and approximately $5,500,000 net new money (*Third State Commission Decision, supra*, pp. 159, 162 (R. pp. 130, 133); *First Federal Commission Decision, supra*, p. 457 (Appendix to this brief, p. 89); *Second Federal Commission Decision, supra*, pp. 495, 496 (R. pp. 144, 145).)

These findings are fully supported by the record. A union passenger station and facilities which satisfactorily meet the requirements of the State Commission order can be constructed at a cost of $9,175,603. The salvage value of released real property is $3,453,000. The net new money cost is $5,722,603. (R. pp. 231, 232, 267, 301, 302.)

Under the Railroads' plan for separate facilities the Atchison, Topeka and Santa Fe Railway Company would construct a new passenger station and incidental facilities on its present site at a cost of $1,182,318 (R. p. 230) and the Southern Pacific Company and Los Angeles and Salt Lake Company would jointly expend $4,330,281 in new money for construction and land to carry out the Southern Pacific-Salt Lake plan for joint facilities at the Southern Pacific Arcade site. (R. pp. 296, 300.) Carriers' Exhibit No. 88 (R. p. 287) certified separately as an original exhibit (Praecipe Item 54(j) R. p. 8) shows in detail the cost of the Southern Pacific-Salt Lake plan. The first sheet thereof is a summary of the cost, and is as follows:

L. A. & S. L. R. R. & S. P. COMPANY
JOINT PASSENGER TERMINAL
LOS ANGELES, CALIFORNIA.

SUMMARY.

S. P. Co. Unit No. 1:		
Section A: Northerly double track bridge across L. A. River to 6th & Alameda Sts.	$1,739,771	
Section B: Fourth to Sixth Sts., Station yard	172,340	
Section C: Interlocking 6th & Alameda Street	165,862	
Total S. P. Unit	2,077,973	
S. P. Co. Unit No. 2:		
Double track connection from L. A. & S. L. R. R. to S. P. Co. Avenue 18 to Dayton Ave.	444,769	
S. P. Co. Alhambra Ave. Connections to L. A. & S. L. R. R.:		
North and South connections	85,953	
S. P. Co. Coach Yard	419,679	
Total S. P. Co.		$3,028,374
L. A. & S. L. R. R. Unit No. 1:		
Alhambra Ave. to connection south of 9th St.	1,208,835	
L. A. & S. L. R. R. Unit No. 2:		
Alhambra Avenue to Avenue 18	93,072	
Total Salt Lake Co.		1,301,907
Grand Total		$4,330,281

We thus find that under the Railroads' plan for separate passenger terminal facilities, they would immediately expend a total of $5,512,598 in new money, a sum in excess of the new money cost of joint terminal facilities at the Plaza which would meet with the require-

ments of the State Commission order. A comparison of the total investment in passenger terminal facilities under the Railroads' plan with the total investment under the Plaza plan of a union station shows that under the former $11,326,943 would be invested in Los Angeles passenger terminal facilities (R. p. 296), whereas, under the latter plan, the total investment would be approximately $10,000,000. (R. pp. 133, 231, 302.) From the standpoint of total investment, which must ultimately be sustained by the public, the Plaza plan is obviously preferable to the Railroads' plan for separate facilities.

In the *First Federal Commission Decision, supra,* pages 451, 456, 457, the Interstate Commerce Commission found that the total investment in passenger terminal facilities of the three Railroads would be less under the Plaza plan than under the Railroads' plan for separate facilities. (Appendix to this brief, pp. 78, 87-89.)

E. The Ruling of the California Supreme Court that the Findings and Order of the California Commission Are Reasonable and Supported By Ample Evidence Must Be Sustained.

In the light of the foregoing facts, it is apparent that the State Court was clearly correct in its decision in holding that "there is nothing unreasonable or arbitrary in the findings and order made," and that "the findings of the Railroad Commission were made after full consideration and upon ample evidence." (R. pp. 196, 197.)

It is respectfully submitted that the order of the Commission is reasonable in every particular and must be held to be a reasonable exercise of the police power of the State of California.

It is, of course, elementary that it is incumbent upon the railroads to draw to this Court's attention the por-

tions of the record which support their various claims of deprivation of property rights under the Fourteenth Amendment to the Federal Constitution. The burden of showing the order, on its facts, to be unreasonable and arbitrary is upon the appellant carriers. *New Orleans Public Service Inc. v. City of New Orleans,* 281 U. S. 682, 686. In this, we contend the railroads have utterly failed to make a showing. Indeed, in the entire brief of the railroads we find no references to the testimony of record other than the cursory references noted at pages 110 and 111 thereof.

F. The Appellants Are in Error in Urging that the State Commission's Order Requires the Joint Use of Any of Their Property Without Compensation First Paid.

The railroads at pages 94 to 103 of their brief contend that the Commission order requires the *joint use* by one or more carriers of existing tracks and other properties of other carriers and that the order is unlawful because it does not provide that compensation shall be paid to a carrier whose property is to be thus jointly used.

The answer to this contention is simply that the Railroad Commission order does not direct or require any joint use whatever of any existing carrier property. The Commission order (R. pp. 131, 133-134) contains not a word with reference to the joint use of any existing property. It is true that one of the Commission's findings (No. 6, R. p. 132) was that the use by any defendant carrier of so much of the terminal main-line track of any other defendant carrier "as may be incidental and necessary or convenient, to the proper operation of any such union passenger station" as defendants may construct pursuant to the Commission order, is in the public inter-

est. However, there is as yet nothing to show what joint use, if any, will be thus "incidental and necessary or convenient." It may well be that the carriers will not choose to operate jointly any tracks, but will rather construct separate tracks into the new terminal. This possibility was recognized in *First Los Angeles Case, supra* (p. 340), when this Court said

> "the changes to be effected under the order will require, in the abandonment of the Southern Pacific main line track on Alameda Street for three miles and joint use by the Southern Pacific of main tracks on the river bank with either the Salt Lake or the Santa Fe, or the construction of its own main tracks on one side or the other along the river bank. The main tracks of the Salt Lake must be extended across the Los Angeles River on a viaduct to the area selected for the Union Station. The main track of the Santa Fe runs along the river side of the selected area, but an extension of its main tracks will have to be made to bring it into the new station."

It must be assumed that the railroads will either agree upon such joint use of existing trackage as they may deem convenient or desirable (and agree upon the compensation for such use) or proceed to construct their separate tracks into the new station site and thus avoid joint use of existing trackage.

The State Court in its decision, in construing the Commission order, recognized the fact that said order gave to the railroads considerable discretion in working out the details of the arrangements incident to the construction and operation of the station. The Court said (R. p. 198):

> "As to the objection that the order under review does not specify the details of the construction of the

union station, we think it is without merit. A substantial compliance with the plans is all that is required, variation in detail being left to the discretion of the carriers * * *.

In the instant case, the location of the union station is given, the track lay-out is fully shown, the land necessary to be taken is definitely marked out and the general dimensions of the station building are given. As to the details of the arrangement, this is left, considerably, to the discretion of the carriers and, as we have stated, a substantial compliance with the suggested plan is all that is required."

In support of their contention that the State Commission order requires joint use of certain existing trackage, the railroads refer to Commission's Exhibit 6. (R. p. 227.) This exhibit is not a part of the Commission order and obviously the railroads are not required to connect their main-line tracks as suggested in said exhibit. The requirement of the Commission order is that the railroads construct and operate a station in substantial compliance with the Commission's Exhibit 4-b. (R. pp. 133, 267.)

With reference to the division of construction costs of the new union passenger station, it will be noted that Section 36 of the Public Utilities Act (set forth in the Appendix to this Brief, p. 13) gives to the Railroad Commission authority to determine in supplemental proceedings the division of joint costs of the affected utilities. The procedure outlined in said Section 36 may, of course, be invoked by the Commission in the event the railroads cannot agree upon the respective apportionment or division of construction costs. Although this matter is fully covered by Section 36, the State Commission, as a precautionary measure, expressly reserved in its order "the

right to make such further order or orders in these proceedings relating to * * * costs, division of costs, * * * as may be determined by the Commission to be just and reasonable * * *." (R. p. 134.)

G. In the Issuance of Its Order the Railroad Commission Has Not Acted Under the Guise of Exercising Its Police Power Over Grade Crossings.

Appellants in their brief, pages 103 to 112, refer to the language from earlier decisions of the State Commission and contend that in the issuance of the order now in question, the Commission acted pursuant to its authority to eliminate unsafe railroad grade crossings. This claim is without merit.

The only order of the State Commission now before this Court is the order in *Third State Commission Decision, supra.* (R. pp. 119-134.) This is a complete order differing in important particulars from previous orders and in no way dependent upon former findings or opinions of the State Commission.

The order now under review directs the carriers to construct and operate a union passenger station and its necessary incidents and, as above noted, is made pursuant to the Commission's authority over railroad passenger equipment and service and the safety of railroad passenger operations. The order in question does not require the separation of grades along Alameda Street or any other separation. It is true that the order provides (R. pp. 133-4) that after construction of a union passenger station, the operation by the Southern Pacific of its trains on and along Alameda Street, excepting industrial freight switching service, shall cease, but this is a result which

will follow automatically from the construction of the union passenger station.

The Southern Pacific also makes the point (Brief of Appellants, pp. 105-6) that the State Commission should have made an express finding that the existing passenger station facilities of said company are inadequate. In this regard it should be noted: (1) the existing passenger terminal facilities are in fact inadequate, as is shown by the record in this case and, in effect, was found by the Railroad Commission in its findings Nos. 7 and 10. (R. pp. 119, 132-3.) The State Supreme Court so construed the Commission's order (R. p. 196); (2) the finding required by Section 36 of the Public Utilities Act is not that the existing structure is *inadequate,* but that the "additions, extensions * * * or changes in the existing plant, equipment, apparatus, facilities or other physical properties * * * ought reasonably to be made, or that a new structure or structures should be erected to promote the security or convenience of its employees or the public, or in any other way to secure adequate service or facilities * * *." These specific findings were made by the State Commission. (Findings Nos. 3, 4, 5, 6, 7, 10, R. pp. 119, 131-133.)

H. The Order of the State Commission Does Not Require the Railroads, Or Any of Them, to Abandon Adequate Passenger Terminal Facilities, But is Directed at the Existing Inadequacies of the Passenger Terminal Facilities of Each of Said Railroads.

Appellants at pages 109-117 of their brief, under their Points IV(a) and IV(b), contend: (1) that the Southern Pacific is being directed to take action for the purpose of providing the Santa Fe and the Salt Lake with ade-

quate passenger depots and (2) that the Santa Fe and the Salt Lake are being directed to take action for the purpose of eliminating Southern Pacific's grade crossings on Alameda Street. These contentions are obviously unsound. The State Commission order, as appears from the face of the opinion and order, shows that each of the Railroads was directed to join in the construction of a new union passenger station because of its own inadequacies in passenger terminal facilities and because public convenience and necessity require the construction and operation of such station. The particular contentions of the carriers were presented to the State Court and found by that Court to be without merit.

Referring first to the Southern Pacific's situation, the State Court in *Second State Court Case, supra,* (R. pp. 184, 195-6) stated:

> "The Southern Pacific Company, one of the petitioners here, contends that with relation to it the order is void because its necessary force and effect, as to said petitioner, is to require it to abandon adequate facilities and to join the other petitioners in acquiring new property which is unnecessary for a full performance of said petitioner's duties to the public. This argument is made because there has been no finding of fact made by the Railroad Commission of this state that the passenger station and facilities of the Southern Pacific Company was inadequate. There is, assuredly, an implied finding to this effect in the order of the Railroad Commission under review. The argument of the Southern Pacific Company that the evidence does not show that its passenger depot is inadequate, but, on the contrary, shows it to be adequate for some years to come, loses sight

of the fact that an adequate building alone will not constitute adequate passenger terminal facilities, but that a satisfactory passenger terminal contemplates also that passenger trains may safely be directed to said terminal. The record discloses that passenger trains of the Southern Pacific Company can only reach its present passenger terminal by grade crossings along Alameda street, which are so unsafe, impracticable and unreasonable, under all the surrounding circumstances, as to require elimination. The carriers admit the desirability of eliminating the grade crossings, and submitted a plan of their own. Both Commissions have found this plan undesirable and the application of the carrier to proceed in accordance therewith was denied by the Interstate Commerce Commission. Petitioners assert that they do not object to the elimination of grade crossings, but object to the method employed for accomplishing this. Extensive hearings were had upon this general problem and expensive investigations were made by engineers and other experts and the findings of the Railroad Commission were made after full consideration and upon ample evidence."

Referring to the particular contentions of the Santa Fe and the Salt Lake, the Court continued (*Second State Case*, R. pp. 184, 196-7):

"It is contended by the petitioners, Atchison, Topeka and Santa Fe Railway Co. and Los Angeles and Salt Lake Railroad Co., that their property is being taken for public use without compensation and without due process of law because the necessary effect of the order under review is to require them to join in the construction of a union station, the primary purpose of which is to accomplish the re-

moval of the tracks of the Southern Pacific Company from Alameda street, a matter with which they are unconcerned. The Railroad Commission, on the other hand, takes a position which we think is correct, to the effect that each company is ordered to join in the erection of the union station because of its own inadequacies in terminal passenger facilities; that the proportionate expense of each has not yet been determined, and that when it is determined, it is assumed that each carrier will be required to pay because of and in an amount proportionate to the evils in its system sought to be remedied by the new plan. It cannot be assumed that in the event they fail to agree upon a segregation of the costs, the Railroad Commission will require any of the carriers to pay more than the amount necessary to furnish proper facilities to perform its duty to the public."

We will not burden the Court by again referring in detail to the portions of the record sustaining the State Court in upholding the Commission in its position "to the effect that each company is ordered to join in the erection of the union station because of its own inadequacies in terminal passenger facilities." We have referred in detail to the record in this regard hereinabove in this brief at pages 70-82.

CONCLUSION.

In conclusion, we respectfully submit that the points urged by the appellants are without merit and that the decision of the Supreme Court of California herein under review should be affirmed.

Dated, San Francisco, California,
April 8, 1931.

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(Appendix Follows.)